

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/STOP PRESS: TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

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STOP PRESS:

The Tribunals, Courts and Enforcement Act 2007 makes provision about tribunals and inquiries, establishes an Administrative Justice and Tribunals Council, amends the law relating to judicial appointments and appointments to the Law Commission, amends the law relating to the enforcement of judgments and debts, makes further provision about the management and relief of debt, makes provision protecting cultural objects from seizure or forfeiture in certain circumstances, amends the law relating to the taking of possession of land affected by compulsory purchase and alters the powers of the High Court in judicial review applications. The Act received the royal assent on 19 July 2007 and the following provisions came into force on that date: ss 53, 55-57, 145, 147-149, Sch 11. The following provisions came into force on 19 September 2007: ss 1, 2, 7 (in part), 9, 10 (in part), 11 (in part), 13 (in part), 18 (in part), 20 (in part), 21 (in part), 22, 27 (in part), 30-42, 45 (in part), 46, 48 (in part), 49, 50 (in part), 54, 58-61, 144 (in part), Schs 1 (in part), 4-9 (in part); 1 November 2007: ss 44, 45 (in part), 48 (in part), 146, Schs 7 (in part), 8 (in part), 23 (in part); 1 December 2007: s 48 (in part), Sch 8 (in part); 1 April 2008: ss 139, 140, Sch 22; 1 June 2008: s 48 (in part), Schs 7 (in part), 8 (in part) (SI 2007/2709). The 2007 Act ss 134-138 came into force on 31 December 2007: SI 2007/3613. The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-49) Tribunals and Inquiries

Section 1 extends the definition of 'the judiciary' to the holders of specified offices. Section 2, Sch 1 provide that Her Majesty may, on the recommendation of the Lord Chancellor, appoint a person to the office of Senior President of Tribunals. The First-tier Tribunal and the Upper Tribunal are established by s 3. Section 4, Sch 2 set out provisions relating to judges and other members of the First-tier Tribunal. Section 5, Sch 3 specify who is eligible to be a judge of the Upper Tribunal. Provision is made as to who may be a judge of the First-tier Tribunal, as well as the Upper Tribunal: s 6. The Lord Chancellor may, with the concurrence of the Senior President of Tribunals, by order make provision for the organisation of the First-tier Tribunal and the Upper Tribunal into a number of chambers: s 7, Sch 4. Section 8 gives the Senior President of Tribunals the power to delegate his functions. Sections 9, 10 provide for the review of decisions of the First-tier Tribunal and the Upper Tribunal. Section 11 provides that any person treated by the Lord Chancellor as a party to a case has a right to appeal to the Upper Tribunal. The Upper Tribunal may, but need not, set aside the decision of the First-tier Tribunal, and if it does, must either remit the case to the First-tier Tribunal with directions for its reconsideration, or re-make the decision: s 12. Section 13 provides the basis on which appeals can be made to the Court of Appeal. The appellate court may, but need not, set aside the decision of the Upper Tribunal, and if it does, must either remit the case to the Upper Tribunal or, where the decision of the Upper Tribunal was on an appeal or reference from another tribunal or some other person, to the Upper Tribunal or that other tribunal or person, with directions for its reconsideration, or re-make the decision: s 14. Section 15 grants the Upper Tribunal 'judicial review' jurisdiction in so much as it provides the Upper Tribunal with the power to grant a mandatory order, a prohibiting order, a quashing order, a declaration and an injunction. Such an application for relief may be made only if permission to make it has been obtained from the tribunal: s 16. If the Upper Tribunal makes a quashing order in respect of a decision, it may in addition remit the

matter concerned to the court, tribunal or authority that made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the Upper Tribunal, or substitute its own decision for the decision in question: s 17. Section 18 sets out the conditions that need to be met for the Upper Tribunal to have power to deal with an application for relief or an application for permission to apply for relief. The procedure for the transfer of judicial review applications from the High Court to the Upper Tribunal is provided by s 19. Sections 20, 21 deal with the transfer of judicial review applications from the Court of Session. Section 22, Sch 5 provide for there to be rules, to be called 'Tribunal Procedure Rules', governing the practice and procedure to be followed in the First-tier Tribunal and the practice and procedure to be followed in the Upper Tribunal. The Senior President of Tribunals may give directions as to the practice and procedure of the First-tier Tribunal, and as to the practice and procedure of the Upper Tribunal: s 23. A person exercising power to make Tribunal Procedure Rules or give practice directions must, when making provision in relation to mediation, have regard to the principle that mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties and that where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings: s 24. In relation to the attendance and examination of witnesses, the production and inspection of documents and all other matters incidental to the Upper Tribunal's functions, the Upper Tribunal has the same powers, rights, privileges and authority as the High Court: s 25. Each of the First-tier Tribunal and the Upper Tribunal may decide a case in England and Wales, in Scotland, or in Northern Ireland, even though the case arises under the law of a territory other than the one in which the case is decided: s 26. A sum payable in pursuance of a decision of the First-tier Tribunal or Upper Tribunal is recoverable as if it were payable under an order of a county court or the High Court: s 27. If it appears to the First-tier Tribunal or the Upper Tribunal that a matter before it requires special expertise not otherwise available to it, it may direct that in dealing with that matter it must have relevant knowledge or experience: s 28. The costs of all proceedings in the First-tier Tribunal and the Upper Tribunal are to be in the discretion of the tribunal in which the proceedings take place: s 29. Section 30 gives the Lord Chancellor the power to transfer a function of a scheduled tribunal to be transferred to the First-tier Tribunal or the Upper Tribunal or to the First-tier Tribunal and the Upper Tribunal. The Lord Chancellor may, by order, make provision for abolishing the tribunal by whom such a transferred function is exercisable immediately before its transfer: s 31. Sections 32-34 provide the power to appeal to the Upper Tribunal from tribunals in Wales, Scotland and Northern Ireland. Under s 35, it is possible to transfer to the Lord Chancellor administrative functions of other ministers in relation to certain tribunals. Section 36 provides for the transfer of powers to make procedural rules for certain tribunals. Under s 37, the Lord Chancellor may amend the lists of tribunals in Sch 6. Provision in an order under any of ss 30-36 may take the form of amendments, repeals or revocations of enactments: s 38. The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the First-tier Tribunal, the Upper Tribunal, employment tribunals, the Employment Appeal Tribunal and the Asylum and Immigration Tribunal, and that appropriate services are provided for those tribunals: s 39. Under s 40, the Lord Chancellor may appoint such staff as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals. Under s 41, the Lord Chancellor may provide, equip, maintain and manage such tribunal buildings, offices and other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals. Section 42 gives the Lord Chancellor the power to prescribe fees. Each year the Senior President of Tribunals must give the Lord Chancellor a report covering, in relation to relevant tribunal cases, matters that the Senior President of Tribunals wishes to bring to the attention of the Lord Chancellor and matters that the Lord Chancellor has asked the Senior President of Tribunals to cover in the report: s 43. Section 44, Sch 7 establish the Administrative Justice and Tribunals Council and make provision about membership, committees and functions of the Council. The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished: s 45. Under s 46, the Lord Chief Justice may delegate certain functions. Section 47 provides that persons with responsibilities in connection with a

courts-related activity and persons with responsibilities in connection with the corresponding tribunals activity, must co-operate with each other in relation to the carrying-on of those activities. Section 48, Schs 8, 9 make consequential amendments and transitional provisions. Section 49 sets out the procedure to be followed in respect of the various types of order which can be made under Part 1.

Part 2 (ss 50-61) Judicial appointments

Section 50, Sch 10 set out the eligibility conditions for judicial appointment. In addition, the Lord Chancellor may by order specify a relevant qualification: s 51. Section 52 defines the meaning of 'gain experience in law' for the purposes of s 50. Section 53 makes provision for the appointment to fee-paid judicial offices of those who have previously held corresponding salaried appointments. Section 54 provides for the continuation of judicial office after the normal retirement date. Under s 55, the Lord Chancellor is given responsibility for the appointment of deputy circuit judges. Section 56, Sch 11 make provision for the appointment of deputy district judges. Section 57 amends the provisions in the Supreme Court Act 1981 for appointing deputies and temporary officers to certain posts, including masters and registrars of the Supreme Court. The 2007 Act s 58 provides for the appointment of temporary assistant to Judge Advocate General. Section 59 removes references to the offices of member and Chairman of the Special Immigration Appeals Commission, the Proscribed Organisations Appeal Commission and the Pathogens Access Appeal Commission. Under s 60, the Lord Chancellor may select the Chairman of the Law Commission from serving members of the senior judiciary only. Section 61 relates to the Northern Ireland Judicial Appointments Commission.

Part 3 (ss 62-90) Enforcement by taking control of goods

Section 62, Schs 12, 13 apply where an enactment, writ or warrant confers the power to take control of goods and sell them to recover a sum of money. Section 63 sets out who may act as an enforcement agent. A certificate to act as an enforcement agent may be issued by a judge assigned to a county court district and, in prescribed circumstances, by a district judge: s 64. Sections 62-70 replace the common law rules about the exercise of the powers which under ss 62-70 become powers to use the procedure for taking control of goods: s 65. However, any pre-commencement enforcement is not affected: s 66. County court enforcement is transferred to any person authorised by or on behalf of the Lord Chancellor: s 67. Sections 68, 69 provide for magistrates' courts warrants of control and county court warrants of control. If at any time the High Court is satisfied that a party to proceedings is unable to pay a sum recovered against him or any instalment of such a sum, the court may stay the execution of any writ of control issued in the proceedings, for whatever period and on whatever terms it thinks fit: s 70. Section 71 abolishes the common law right to distrain for arrears of rent. Under s 72, a landlord under a lease of commercial premises may use the procedure for taking control of goods to recover from the tenant rent payable under the lease. Section 73 defines 'landlord', in relation to a lease, as the person for the time being entitled to the immediate reversion in the property comprised in the lease. 'Lease' means a tenancy in law or in equity, including a tenancy at will, but not including a tenancy at sufferance: s 74. Section 75 defines what is meant by 'a lease of commercial premises'. 'Rent' means the amount payable under a lease for possession and use of the demised premises, together with any interest payable on that amount under the lease and any value added tax chargeable on that amount or interest: s 76. Section 77 sets out the conditions which must be met before commercial rent arrears recovery is exercisable. Section 78 provides for the intervention of the court on the application of the tenant. When the lease ends, commercial rent arrears recovery ceases to be exercisable, with certain exceptions: s 79. Section 80 deals with the exercise of commercial rent arrears recovery where the premises concerned are an agricultural holding. Where commercial rent arrears recovery is exercisable by a landlord to recover rent due and payable from the immediate tenant, the landlord may serve a notice on any sub-tenant requiring that sub-tenant to pay his rent directly to the landlord: s 81. Section 82 provides that, for any amount that a sub-tenant pays under such a notice, he may deduct an equal amount from the rent that would be due to his immediate

landlord under the sub-lease. A notice under s 81 is replaced if the landlord serves another notice on the same sub-tenant for a notified amount covering the same rent or part of that rent: s 83. Under s 84, for the purposes of the recovery of sums payable by a sub-tenant under s 81, the sub-tenant is treated as the immediate tenant of the landlord, and the sums are to be treated as rent accordingly. Contracts for rights similar to commercial rent arrears recovery are to be void: s 85. Section 86, Sch 14 make minor and consequential amendments. Section 87 deals with interpretation for ss 71-87. Crown preference for the purposes of execution against goods is abolished: s 88. Section 89 provides that Part 3 binds the Crown. Section 90 deals with the procedure for making regulations.

Part 4 (ss 91-105) Enforcement of judgments and orders

Section 91, Sch 15 make amendments to the Attachment of Earnings Act 1971 about the basis on which periodical deductions are to be made under an attachment of earnings order. By virtue of the 2007 Act s 92, Her Majesty's Revenue and Customs information may be provided to the courts for the purpose of re-directing a lapsed attachment of earnings order. Section 93 provides for making and enforcing charging orders in cases where the debtor is not in default under an instalments order made in relation to the sum to be secured by the charging order. Section 94 provides the power to set financial thresholds below which a court cannot make a charging order. A person who is the creditor in relation to a judgment debt may apply to the High Court or a county court for information about what kind of action it would be appropriate to take in court to recover that particular debt: s 95. If the creditor in relation to a judgment debt makes such an application for information, the relevant court may make a departmental information request or an information order in relation to the debtor: s 96. Section 97 provides that a departmental information request is a request for the disclosure of information held by, or on behalf of, a government department. An information order is an order of the relevant court which specifies a prescribed person, specifies prescribed information relating to the debtor and orders the information discloser to disclose the required information to the relevant court: s 98. Under s 99, if the relevant court makes a departmental information request, the recipient of the request may disclose to the relevant court any information that the recipient considers is necessary to comply with the request. An information discloser is not to be regarded as having breached an information order because of a failure to disclose some or all of the required information, if that failure is for one of the permitted reasons: s 100. By s 101, if the creditor in relation to a judgment debt makes an application for information under s 95 and information is disclosed to the relevant court in compliance with a request or order made under s 96, the relevant court may use the debtor information for the purpose of making another request or order under s 96 in relation to the debtor. A person to whom the debtor information is disclosed commits an offence if he uses or discloses the debtor information and the use or disclosure was unauthorised: s 102. Section 103 provides that it is for the Lord Chancellor to make information regulations. Section 104 deals with interpretation for ss 95-103. Section 105 provides for application and transitional provision.

Part 5 (ss 106-133) Debt management and relief

Section 106, Sch 16 replace the existing County Courts Act 1984 Pt 6 (ss 112-112A) relating to administration orders. The 2007 Act s 107 adds the 1984 Act Pt 6A (ss 117A-117X) on enforcement restriction orders. The 2007 Act s 108, Sch 17 insert the Insolvency Act 1986 Pt VIIA (ss 251A-251X) on debt relief orders, the 2007 Act Sch 18 sets out the conditions for making a debt relief order, Sch 19 sets out debt relief restrictions, orders and undertakings and Sch 20 sets out consequential amendments with regard to debt relief orders. Section 109 sets out the conditions that a scheme must meet in order to be considered a debt management scheme. Section 110 sets out the conditions that a plan must meet to be considered a debt repayment plan. The supervising authority may approve one or more debt management schemes, and regulations may specify a procedure for making an application for approval of a debt management scheme: ss 111, 112. Section 113 sets out the relevant terms to which the approval of a debt management scheme is subject. Regulations under ss 111, 113 are set out

in Sch 21. If a debt repayment plan is arranged for a non-business debtor in accordance with an approved scheme and the plan comes into effect, the debtor is discharged from the debts that are specified in the plan: s 114. During the currency of a debt repayment plan arranged in accordance with an approved scheme, no qualifying creditor of the debtor is to present a bankruptcy petition against the debtor in respect of a qualifying debt, unless regulations provide otherwise or the creditor has the permission of a county court: s 115. In relation to a non-business debtor during a period of protection, no qualifying creditor of the debtor is to pursue any remedy for the recovery of a qualifying debt, unless regulations provide otherwise or the creditor has the permission of a county court: s 116. Section 117 provides that, in relation to a non-business debtor during a period of protection, no qualifying creditor is to charge any sum by way of interest, fee or other charge in respect of a qualifying debt, unless regulations provide otherwise or the creditor has the permission of a county court. In relation to a non-business debtor during a period of protection, a domestic utility creditor is any person who provides the debtor with a supply of mains gas or mains electricity for the debtor's own domestic purposes and is a creditor under a qualifying debt that relates to the provision of that supply: s 118. Section 119 sets out what conditions must be met if the county court is to stay the proceedings. Regulations may make provision about the registration of any request made to the operator of an approved scheme for a debt repayment plan to be arranged in accordance with the scheme or any debt repayment plan arranged for a non-business debtor in accordance with an approved scheme: s 120. Section 121 provides that if a debt repayment plan is arranged for a debtor in accordance with an approved scheme and immediately before the plan is arranged other debt management arrangements are in force in respect of the debtor, the plan is not to come into effect unless the other debt management arrangements cease to be in force. If a debt repayment plan is arranged for a debtor in accordance with an approved scheme, an affected creditor may appeal to a county court against the fact that the plan has been arranged, the fact that a debt owed to the affected creditor has been specified in the plan, or the terms of the plan: s 122. Section 123 provides that if such an appeal is made to a county court, the county court may determine the appeal in any way that it thinks fit. The operator of an approved scheme may recover its costs by charging debtors or affected creditors: s 124. Under s 125, regulations may specify a procedure for terminating the approval of a debt management scheme. The approval of a debt management scheme may be terminated only if the termination is in accordance with specified terms: s 126. Section 127 specifies that provision may be made to allow the supervising authority to deal with a termination case other than by terminating the approval. Under s 128, provision may be made about the effects if the approval of a debt management scheme comes to an end. Section 129 specifies that the supervising authority is the Lord Chancellor or any person that the Lord Chancellor has authorised to approve debt management schemes. In accordance with s 130, it is for the Lord Chancellor to make regulations. Main definitions are set out in s 131. All debts are qualifying debts except any debt secured against an asset or, in relation to a debt repayment plan which has been requested or arranged, any debt which could not, by virtue of the terms of the debt management scheme, be specified in the plan: s 132. Section 133 defines a 'period of protection'.

Part 6 (ss 134-138) Protection of cultural objects on loan

Section 134 sets out the conditions an object must fulfil if it is to be considered to be protected. While an object is protected it may not be seized or forfeited under any enactment or rule of law, unless it is seized or forfeited under or by virtue of an order made by a court in the United Kingdom, and the court is required to make the order under, or under provision giving effect to, a Community obligation or any international treaty: s 135. Section 136 provides a definition of 'museum or gallery'. Section 137 deals with interpretation for Part 6. Part 6 binds the Crown: s 138.

Part 7 (ss 139-143) Miscellaneous

Section 139 enables writs of possession issued to enforce compulsory purchase orders to be executed by High Court enforcement officers and Sch 22 sets out consequential amendments with regard to compulsory purchase. Section 140 amends the Courts Act 2003 Sch 7 in order to provide for the issue of certain warrants to enforcement officers. The 2007 Act s 141 extends the power of the High Court in respect of quashing orders. Section 142 deals with the recovery of sums payable under compromises involving ACAS and s 143 deals with appeals in relation to design rights.

Part 8 (ss 144-149) General

Section 144 specifies protected functions of the Lord Chancellor. Under s 145, the Lord Chancellor has the power to make supplementary or other provision. Section 146, Sch 23 contain repeals. Sections 147-149 deal with extent, commencement and short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Lands Clauses Consolidation Act 1845 ss 3, 91; Registered Designs Act 1949 ss 27A, 28; Courts-Martial (Appeals) Act 1951 s 30(2); Law Commissions Act 1965 s 1; Compulsory Purchase Act 1965 s 13; Courts Act 1971 s 24; Attachment of Earnings Act 1971 ss 15A-15D; Charging Orders Act 1979 s 3A; Magistrates' Courts Act 1980 s 125ZA; Supreme Court Act 1981 ss 31, 31A, 91; County Courts Act 1984 ss 99, 112A-112AI, 117A-117X; Insolvency Act 1986 Pt 7A; Copyright, Designs and Patents Act 1988 s 249; Judicial Pensions and Retirement Act 1993 s 26; Employment Tribunals Act 1996 s 19A; Courts Act 2003 Sch 7; Constitutional Reform Act 2005 s 3, 94A, 94B, Sch 7.

Secretary of State for Constitutional Affairs: transfer of functions

The functions of the Lord Chancellor under the Courts and Legal Services Act 1990 Pts 2, 4, ss 113, 125 and the Access to Justice Act 1999 Pts 1-3 have been transferred to the Secretary of State for Constitutional Affairs: see the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, arts 1(4), 4, Sch 1.

Renaming of the Supreme Courts of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales: see Constitutional Reform Act 2005 s 59. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(i) Definition and Creation of Courts/301. Meaning of 'court'.

1. INTRODUCTION

(1) THE NATURE OF COURTS

(i) Definition and Creation of Courts

301. Meaning of 'court'.

Originally the term 'court'¹ meant, among other things, the Sovereign's palace. It has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either directly or indirectly from the Sovereign. All tribunals, however, are not courts, in the sense in which the term is here employed. Courts are tribunals which exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus, arbitrators, committees of clubs and the like, although they may be tribunals exercising judicial functions², are not 'courts' in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term even though the chief part of its duties is not judicial. Parliament is a court. Its duties are mainly deliberative and legislative; the judicial duties are only part of its functions³. A coroner's court is a true court⁴ although its essential function is investigation⁵.

1 'Court (Curia) signifies the King's place, or mansion, and is more especially the place where justice is judicially administered': Jacob *Law Dictionary* 'Courts'. 'Courts est diversment prise, ascun soits pur le meason ou le Roy est present ove son ordinary attendants; et auxy le lieu ou justice est judicialment ministre' (Court is diversely taken, sometimes for the house where the King remains with his ordinary retinue; and also the place where justice is judicially ministered): Termes de la Ley, 'Court'. 'Court, Latin cohort-em, cortem ... at an early date the French word appears to have been associated with Latin *curia*, and hence apparently the series of senses under branches III and IV, in which *curia* is the regular medieval Latin equivalent ... III an assembly held by the sovereign ... IV a court of judicature, of law, or of administration. 10. Applied to Parliament ... 11. An assembly of judges or other persons legally appointed and acting as a tribunal to hear and determine any cause, civil, ecclesiastical, military, or naval': *Oxford English Dictionary* 'Court'.

2 The control by virtue of judicial review exercised by the Administrative Court over the performance of judicial duties by tribunals or other authorities, and the distinction between the performance of judicial or quasi-judicial functions on the one hand, and of administrative functions on the other hand, are considered elsewhere in this work: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 58 et seq. Although a particular tribunal may not be rightly described as a court, a prerogative order may be able to be issued to it and there may be a fair analogy between its position and that of a court: see *R v North Worcestershire Assessment Committee, ex p Hadley* [1929] 2 KB 397 at 405 per Lord Hewart CJ.

3 See PARA 351 et seq post; and PARLIAMENT vol 78 (2010) PARA 801 et seq.

4 As to coroners' courts see CORONERS vol 9(2) (2006 Reissue) PARA 904.

5 See *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 446-447, CA, per Fry LJ.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

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302. What is a court in law.

The question is whether the tribunal is a court, not whether it is a court of justice, for there are courts which are not courts of justice¹. In determining whether a tribunal is a judicial body the facts that it has been appointed by a non-judicial authority, that it has no power to administer an oath or affirmation, that the chairman has a casting vote, and that third parties have power to intervene are immaterial, especially if the statute setting it up prescribes a penalty for making false statements; elements to be considered are (1) the requirement for a public hearing, subject to a power to exclude the public in a proper case; and (2) a provision that a member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings².

A tribunal is not necessarily a court in the strict sense of exercising judicial power merely because (a) it gives a final decision; (b) it hears witnesses on oath; (c) two or more contending parties appear before it between whom it has to decide; (d) it gives decisions which affect the rights of subjects; (e) there is an appeal to a court; and (f) it is a body to which a matter is referred by another body³.

Many bodies are not courts even though they have to decide questions, and in so doing have to act judicially⁴, in the sense that the proceedings must be conducted with fairness and impartiality. Examples are the benchers of the Inns of Court when considering the conduct of one of their members, the Professional Conduct Committee of the General Medical Council when considering questions affecting the conduct of a medical practitioner⁵, a trade union when exercising disciplinary jurisdiction over its members⁶, the chief officer of a statutory force exercising discipline over members of the force⁷, the former local valuation courts (now valuation tribunals)⁸, the former assessment committees⁹, or the former court of referees which was constituted under the Unemployment Insurance Acts¹⁰. A meeting of a local authority for granting music and dancing licences is not a court¹¹. Justices to whom the powers of a local authority to grant film licences under the Cinemas Act 1985¹² have been delegated are not a magistrates' court with power to state a case for the opinion of the High Court¹³.

For the purposes of the Contempt of Court Act 1981, 'court' includes any tribunal or body exercising the judicial power of the state, and 'legal proceedings' is to be construed accordingly¹⁴. A mental health review tribunal is a court for these purposes¹⁵.

1 See *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 447, CA, per Fry LJ.

2 *Copartnership Farms v Harvey-Smith* [1918] 2 KB 405 at 411-413.

3 *Shell Co of Australia Ltd v Federal Taxation Comr* [1931] AC 275 at 296-297, PC, per Lord Sankey LC. See also *Addis v Crocker* [1961] 1 QB 11 at 21, [1960] 2 All ER 629 at 637, CA; and *United Engineering Workers' Union v Devanayagam* [1968] AC 356, [1967] 2 All ER 367, PC.

4 The fact that a decision is a judicial decision in the true sense does not necessarily have the consequence that the person or body who made the decision was a court: see *Report of Committee on Ministers' Powers* (1932) (Cmd 4060) p 74; and see eg *Ranaweera v Wickramasinghe* [1970] AC 951, PC.

5 *General Medical Council v British Broadcasting Corp'n* [1998] 3 All ER 426, [1998] 1 WLR 1573, CA; and see *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 447, CA, per Fry LJ. For the powers of benchers of the Inns of Court see LEGAL PROFESSIONS. As to the Professional Conduct Committee see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 26. As to the censors of the Royal College of Physicians see PARA 308 note 5 post.

6 *Burn v National Amalgamated Labourers' Union* [1920] 2 Ch 364 at 374. As to the jurisdiction of the courts to interfere with the expulsion of a member from a club or trade union or trade association see CLUBS vol 13 (2009) PARA 240; EMPLOYMENT vol 40 (2009) PARA 976.

In relation to trade associations, the sanction of putting the names of members or non-members on a stop list is not unlawful; neither is it a criminal offence for the council or disciplinary committee of such an association to offer as alternative the payment of a fine, within reasonable limits: see *Thorne v Motor Trade Association* [1937] AC 797, [1937] 3 All ER 157, HL.

7 *Ex p Fry* [1954] 2 All ER 118 at 119, [1954] 1 WLR 730 at 732, CA, per Lord Goddard CJ.

8 *A-G v British Broadcasting Corpn* [1981] AC 303, [1980] 3 All ER 161, HL.

9 *Mersey Docks and Harbour Board v West Derby Assessment Committee and Bottomley (Revenue Officer)* [1932] 1 KB 40 at 104, CA, per Scrutton LJ; cf *R v Assessment Committee of St Mary Abbots, Kensington* [1891] 1 QB 378 at 382, CA, per Lord Esher MR ('I do not think that they are a court or exercising judicial functions'); and *R v North Worcestershire Assessment Committee, ex p Hadley* [1929] 2 KB 397 at 404-405, per Lord Hewart CJ. As to the abolition of assessment committees see RATING AND COUNCIL TAX.

10 *Collins v Henry Whiteway & Co* [1927] 2 KB 378. The enactments in question were repealed by the National Insurance Act 1946 s 65, Sch 9 (repealed).

11 *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431, CA. As to such licences see LICENSING AND GAMBLING vol 67 (2008) PARAS 31, 53 et seq.

12 See LICENSING AND GAMBLING.

13 *Huish v Liverpool Justices* [1914] 1 KB 109 (decided under earlier legislation); and see MAGISTRATES. In *Re Andrew* (1853) 17 Jur 1145 the test applied by Romilly MR (following the dicta in *Re Gaitskell* (1845) 1 Ph 576 at 578) to determine whether a body constituted a true court exercising judicial functions was whether or not the business consisted of 'some proceeding either in a suit or with a view to a suit'. It is submitted however that that decision turned mainly on the construction of the Solicitors Act 1843 s 37 (repealed). See also *Newman v Foster* (1916) 86 LJB 360, DC (justices sitting as judicial authority under the Mental Deficiency Act 1913 s 19 (repealed) not a magistrates' court with power to state a case).

14 Contempt of Court Act 1981 s 19. See generally CONTEMPT OF COURT.

15 *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370, [1991] 1 All ER 622, HL.

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301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

302 What is a court in law

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 12--Cinemas Act 1985 repealed: Licensing Act 2003 Sch 6 para 95.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(i) Definition and Creation of Courts/303. Procedure.

303. Procedure.

A court exercising judicial functions has an inherent power to regulate its own procedure, save in so far as its procedure has been laid down by the enacted law, and it cannot adopt a practice or procedure contrary to or inconsistent with rules laid down by statute or adopted by ancient usage¹. This inherent power may be used to prevent the court being used to achieve injustice². The procedure of the Supreme Court, county courts and most courts of record is now substantially regulated by statutory rules³.

1 *Ex p Evans* (1846) 9 QB 279 (quarter sessions had an inherent power to order that barristers should have exclusive audience at all times when more than five in number were present); *Collier v Hicks* (1831) 2 B & Ad 663; *O'Toole v Scott* [1965] AC 939, [1965] 2 All ER 240, PC; *Engineers' and Managers' Association v Advisory, Conciliation and Arbitration Service* [1979] 3 All ER 223, CA. As to rights of audience see PARA 331 post.

2 See *Bremer Vulcan Schiffbau und Maschinenfabrik v South India Shipping Corp'n Ltd* [1981] 1 All ER 289 at 295, HL, per Lord Diplock; followed in *Taylor and anor v Lawrence and anor* [2002] EWCA Civ 90, [2002] 2 All ER 353, [2002] All ER (D) 28 (Feb) (in exceptional circumstances, the Court of Appeal has power to reopen an appeal already determined).

3 As to the Civil Procedure Rules which govern most civil practice and procedure see PARA 575 post; and CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq; as to the Crown Court Rules see PARA 577 post; and as to family proceedings rules see PARA 576 post; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 206 et seq; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1005.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

303 Procedure

NOTE 2--For the procedure for reopening an appeal already determined, see now CPR 52.17; and CIVIL PROCEDURE vol 12 (2009) PARA 1674.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(i) Definition and Creation of Courts/304. Creation of courts.

304. Creation of courts.

Courts are created by the authority of the Sovereign as the fountain of justice¹, her authority being exercised either by statute², by charter³, by letters patent⁴ or by Order in Council⁵. In

some cases a court may be held by prescription, as having existed from time immemorial, with the implication that there was at some time a grant of the court by the Sovereign, which has been lost⁶.

An Act of Parliament is necessary to create a court which does not proceed according to the common law⁷, although the Sovereign might grant a court with jurisdiction to hear and determine actions according to the common law, either limited or unlimited⁸. She might also grant the franchise of cognisance of pleas, by which the grantee obtained cognisance of all pleas within the limits of the grant which were commenced in courts other than that of the grantee⁹. The Sovereign might also grant an exempt jurisdiction, whereby the inhabitants of a city or borough could not be sued except within that city or borough¹⁰.

1 Bac Abr, Prerogative, D, 1: 'All jurisdiction exercised in these Kingdoms, that are in obedience to our King, is derived from the Crown; and the laws, whether of a temporal, ecclesiastical, or military nature, are called his laws; and it is his prerogative to take care of the due execution of them. Hence all judges must derive their authority from the Crown, by some commission warranted by law; and must exercise it in a lawful manner, and without any the least deviation from the known and stated forms'.

2 Eg in the case of the former Court of Common Pleas by the Magna Carta of Edward I (1297) c 11 (repealed); the county courts by the County Courts Act 1846 (repealed) (see now the County Courts Act 1984 s 1; and PARA 707 post); the Supreme Court of Judicature (now known as the Supreme Court of England and Wales) by the Supreme Court of Judicature Act 1873 (repealed) (see now the Supreme Court Act 1981 s 1; and PARA 601 post); and the Crown Court by the Courts Act 1971 s 4(1) (repealed: see now the Supreme Court Act 1981 s 45(1); and PARA 621 post).

3 Eg in the case of the civil courts of record granted to boroughs in England: see PARA 854 post.

4 Eg the Newfoundland Act 1824 ss 1, 20 (repealed) gave power to the Crown, by charter or by letters patent under the Great Seal, to institute a Superior Court of Judicature in Newfoundland. The court, however, was instituted by charter (SR & O Rev 1904 vol 9, Newfoundland, 5). Newfoundland became a province of Canada in 1949: see COMMONWEALTH vol 13 (2009) PARA 745.

5 See eg the West Indies Associated States Supreme Court Order 1967, SI 1967/223; and COMMONWEALTH vol 13 (2009) PARAS 853, 860, 866.

6 This was the case with some ancient local courts.

7 *Dodwell v Oxford University* (1680) 2 Vent 33 at 34 per curiam: 'No court other than such as proceed according to law can be, unless by prescription or Act of Parliament.' For an exception in the case of a colony not possessed of an independent legislature see *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115 at 152; and COMMONWEALTH vol 13 (2009) PARA 807.

8 Com Dig, Courts P, 1.

9 See *Castle v Lichfield* (1669) Hard 505; *Ginnett v Whittingham* (1886) 16 QBD 761 (privileges of university courts). This does not, however, accord with modern practice.

10 *Crosse v Smith* (1703) 3 Salk 79.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(i) Definition and Creation of Courts/305. Language in Welsh courts.

305. Language in Welsh courts.

The Welsh language may be used in any court in Wales by any party, witness or other person who desires to use it¹. The Lord Chancellor has power to make rules prescribing translations of forms of oath or affirmation and also to provide for the employment and remuneration of interpreters for the purposes of proceedings before courts in Wales². There is a liaison judge for the Welsh language³.

¹ See the Welsh Language Act 1993 s 22(1); *Practice Direction relating to the use of the Welsh Language in Cases in the Civil Courts in Wales*; and CIVIL PROCEDURE vol 12 (2009) PARA 1118. Except in a magistrates' court, prior notice may be required: see CIVIL PROCEDURE vol 12 (2009) PARA 1118.

² See the Welsh Language Act 1993 ss 23, 24; and CIVIL PROCEDURE vol 11 (2009) PARAS 1021, 1031.

³ See *Practice Direction relating to the use of the Welsh Language in Cases in the Civil Courts in Wales* para 7.1; and CIVIL PROCEDURE vol 12 (2009) PARA 1118.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

305 Language in Welsh courts

TEXT AND NOTES--See *Practice Direction (First-tier and Upper Tribunals: Welsh language)* [2009] 1 WLR 331.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(ii) Classification of Courts/306. In general.

(ii) Classification of Courts

306. In general.

Courts may be classified in several ways. Thus, they may be divided into those which are courts of the Queen and those which are not¹; courts which are courts of record and those which are not²; superior and inferior courts³; civil and criminal courts⁴; and domestic and international courts⁵.

- 1 See PARA 307 post.
- 2 See PARA 308 post.
- 3 See PARA 309 post.
- 4 See PARA 310 post. However, many courts in practice exercise both civil and criminal jurisdiction.
- 5 See PARA 311 post. Under the rules regulating the conflict of laws, domestic courts may in practice exercise some extra-territorial jurisdiction.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(ii) Classification of Courts/307. Queen's courts.

307. Queen's courts.

Courts may be divided into those which are courts of the Queen and those which are not. The latter class includes, or would have included, the palatine courts¹, where the Queen parted with the jura regalia in the county palatine, courts baron and the old sheriffs' county courts². All other courts are the Queen's courts.

1 The Lancaster and Durham Palatine Courts were merged with the High Court by the Courts Act 1971 s 41: see PARA 606 post.

2 As to courts baron and the old sheriffs' county courts see PARA 854 post.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(ii) Classification of Courts/308. Courts of record.

308. Courts of record.

Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record¹. In the case of courts not expressly declared to be courts of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison², by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record³.

In the case of civil courts, the further distinction formerly existed between courts of record and courts not of record that in a court of record a writ of error⁴ lay where a judgment was alleged to be wrong, whereas in a court not of record the remedy was by way of a writ of false judgment⁵.

All courts of record⁶ are courts of the Queen, even though a subject or corporation has the benefit of the court⁷. The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein⁸.

1 The following courts and tribunals are courts of record by statute: the High Court (Supreme Court Act 1981 s 19(1)); the Court of Appeal (s 15(1)); the Crown Court (s 45(1)); the Courts-Martial Appeal Court (Courts-Martial (Appeals) Act 1968 s 1(2)); county courts (County Courts Act 1984 s 1(2)); an election court (Representation of the People Act 1983 s 123(1)); the Aircraft and Shipbuilding Industries Arbitration Tribunal (Aircraft and Shipbuilding Industries Act 1977 s 42(2)); the Employment Appeal Tribunal (see the Employment Tribunals Act 1996 s 20(3); and EMPLOYMENT vol 41 (2009) PARA 1388); and the Special Immigration Appeals Commission (Special Immigration Appeals Commission Act 1997 s 1(3) (added by the Anti-terrorism, Crime and Security Act 2001 s 35)). A coroner's court is a court of record, though not by statute: see CORONERS vol 9(2) (2006 Reissue) PARA 904.

The following courts, which have been abolished, were courts of record by statute: the Court of Criminal Appeal (Criminal Appeal Act 1907 s 1(7) (repealed)); the Electricity Arbitration Tribunal (Electricity Act 1947 ss 31(1), 32(1) (repealed)); the Iron and Steel Arbitration Tribunal (Iron and Steel Act 1949 s 44(1) (repealed)); the National Industrial Relations Court (Industrial Relations Act 1971 s 99(6), Sch 3 para 13 (repealed)); the Restrictive Practices Court (Restrictive Trade Practices Act 1956 s 2(3) (repealed)); and the Salford Hundred Court (Salford Hundred Court of Record Act 1868 s 4 (repealed)).

2 Ie to imprison by way of punishment and not merely for safe custody.

3 *Groenvelt v Burwell* (1700) 1 Ld Raym 454; *R v Cotton* (1733) 2 Barn KB 313 at 315; *Kemp v Neville* (1861) 10 CBNS 523; see also *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195 at 214, [1947] 2 All ER 170 at 177, CA. A court of record meant originally one whose acts and proceedings were enrolled in parchment (as in the case of the superior courts of common law). It followed that the council, star chamber, chancery acting as a court of equity, the admiralty and ecclesiastical courts (whose proceedings were not so enrolled) were not courts of record. At about the beginning of the seventeenth century the common law courts developed the doctrine that only a court of record could fine and imprison: see *Griesley's Case* (1588) 8 Co Rep 38a (a court leet was a court of record and accordingly the steward as judge of the court leet could fine for contempt in face of court; no court can fine but such as is a court of record); *Beecher's Case* (1608) 8 Co Rep 58a (only a court of record can fine and imprison; a sheriff's county court could only amerce (an amercement was in effect a fine imposed by the country, not by the court)); *Godfrey's Case* (1614) 11 Co Rep 42a at 43b (a court leet could fine but not imprison; a court of a county or hundred or a court baron could only amerce). This doctrine was not accepted without disagreement (see *R v Almon* (1765) Wilm 243 at 254); but from it developed the corresponding doctrine that a court which could fine and imprison was a court of record; see generally 5 Holdsworth's History of English Law (7th Edn) 157-161. As to the old sheriffs' county courts and the hundred and manorial courts see PARA 854 post.

In the case of criminal courts, this seems to be the only test: see *Groenvelt v Burwell* supra at 467, 469, where the court in question was that of the censors of the Royal College of Physicians who, by the charter set out in 14 & 15 Hen 8 c 5 (Physicians) (1523) and by 1 Mar Sess 2 c 9 (1553) (College of Physicians) (repealed), were given power to fine and imprison. This was followed in *Kemp v Neville* (1861) 10 CBNS 523; but see *Miller v Seare* (1777) 2 Wm Bl 1141 at 1146. As to whether magistrates' courts are courts of record see MAGISTRATES. Any court of record having a criminal jurisdiction has, however, the ancillary power to bind over a person before it to

keep the peace or to be of good behaviour: Justices of the Peace Act 1968 s 1(7) (amended by the Administration of Justice Act 1973 ss 19(1), 20, Sch 5). In the case of civil courts, it was said that courts of record at common law were such courts as have power to hear and determine, according to the course of common law, actions in which the debt, damages or value of the property claimed was £2 or above: Co Litt 117b, 260a; and see *Thomlinson's Case* (1605) 12 Co Rep 104 (Admiralty Court; proceedings according to the civil law and therefore court not a court of record and not able to assess a fine. From a note to this report it appears that originally the King commanded that it be not published, but later the judge resolved that it should be published); contrast *Sparks v Martyn* (1860) 1 Vent 1 (Admiralty Court, though not court of record, might fine and imprison for contempt in face of court). The jurisdiction of the inferior courts which were not courts of record was virtually abolished by the County Courts Act 1867 s 28 (repealed), which prohibited the bringing in such a court of any action which could be brought in a county court.

4 As to the abolition of proceedings in error see PARA 323 note 1 post.

5 Co Litt 118a; 2 Pollock and Maitland's History of English Law (2nd Edn) 666-668.

6 The Palatine Courts of Lancaster and Durham were courts of record, but were not courts of the Queen. As to their merger with the High Court see PARA 606 post.

7 As to the former borough and city courts of record see PARA 854 post.

8 *R v Tyrone Justices* [1917] 2 IR 437. 'Record est un Escript en Parchment, ou sont enroll Pleas de Terre, ou Common Pleas, Faits, ou Criminal Proceedings en ascun Court de Record; mes en Courts nient de Record come Admiraltie, Courts Christian, Courts Baron etc lour Registrie de Procedure ne sont proprement dits Records: Mes Courts de Ley teign per Grant del Roy sont Courts de Record' (Record is a writing in parchment, wherein are enrolled pleas of land or common pleas, deeds, or criminal proceedings in any court of record: but in courts not of record as Admiralty, Courts Christian, Courts Baron etc, their registry of proceedings are not properly called records: but courts of law held by the King's grant are courts of record): Termes de la Ley, 'Record'; see also Jacob *Law Dictionary* 'Record'; 3 Bl Com 24. Records are no longer kept on parchment.

UPDATE

301-332 Introduction

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308 Courts of record

NOTE 1--The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

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309. Superior and inferior courts.

A third way of dividing courts is into superior and inferior courts. In this connection the terms 'superior' and 'inferior' have on different occasions been used in different senses¹. The Court of Appeal², the High Court³ and the Courts-Martial Appeal Court⁴ are superior courts in all senses of the term. The Crown Court, although a superior court⁵, is in certain respects subject to the supervisory jurisdiction of the High Court⁶. It seems that the ecclesiastical courts⁷ are superior

courts in the sense that it need not appear in any proceedings or judgments of these courts that the court was acting within its jurisdiction⁸, but they are inferior courts in the sense that they can be stopped from exceeding their jurisdiction by a prohibiting order granted on judicial review⁹.

The origin of the inferior courts, of which there are many varieties, may be traced back to the principle that justice should be taken to every man's door by constituting as many courts as there were manors in the kingdom. They were primarily the court baron¹⁰, which was incident to every manor, the hundred court¹¹ and the common law county courts, now practically extinct. To these were added numerous borough and other local courts which have been almost totally abolished¹², a variety of courts held for special purposes¹³, and the modern county courts¹⁴. They derived their general title of inferior courts because they were and are, in the great majority of cases, subject to the control and supervision of the Court of King's Bench or Queen's Bench Division as a superior court. A part of the original inherent jurisdiction of the Court of King's Bench was to examine and correct all errors committed by the inferior courts, whether in matter of law or in exceeding the jurisdiction that had been conferred upon them¹⁵.

The chief distinctions between superior and inferior courts are found in connection with jurisdiction¹⁶. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court¹⁷. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary¹⁸. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of claims, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular claim¹⁹. In an inferior court, other than a county court, unless the proceedings show on their face that the cause of action arose within its jurisdiction, the claim cannot be maintained²⁰, and even in inferior courts with a local limit of jurisdiction it must appear that such limit is not being exceeded²¹.

Another distinction between superior courts and inferior courts is that while the unreversed judgment of a superior court is conclusive²² as to all relevant matters decided by it, the judgment of an inferior court involving a question of jurisdiction is not final²³. A further distinction is that a successful claimant is liable to a claim against him for executing the process of an inferior court in a matter beyond its jurisdiction and, in the absence of statutory provision²⁴, cannot justify under such process, whether he knows of the defect or not. The judge and officers of such a court are liable to a claim if they knew of the defect of jurisdiction²⁵.

Every judge of both the superior and inferior courts is entitled to protection from liability in damages in respect of what he does while acting judicially and under the honest belief that his act is within his jurisdiction²⁶ but the holder of any judicial office who acts in bad faith, doing what he knows he has no power to do, is liable in damages²⁷.

1 *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195 at 205, 219, [1947] 2 All ER 170 at 172, 179-180, CA.

2 Supreme Court Act 1981 s 15(1). The Court of Appeal is entirely the creation of statute and did not exist before 1875.

3 *Ibid* s 19(1).

4 The Courts-Martial Appeal Court was constituted as a superior court of record by the Courts-Martial (Appeals) Act 1951 ss 1(1), 2(6) (repealed); see now the Courts-Martial (Appeals) Act 1968 s 1(2); paras 801-804 post; and ARMED FORCES.

5 Supreme Court Act 1981 s 45(1).

6 See *ibid* ss 28(1), (2), (4), 28A, 29(3) (s 28(2) amended by the Local Government (Miscellaneous Provisions) Act 1982 s 2, Sch 3 para 27(6); the Supreme Court Act 1981 s 28(4) added, and s 28A (as added) substituted by the Access to Justice Act 1999 ss 24, 61, Sch 4 paras 21, 22). The Crown Court may state a case for the opinion of the High Court (Supreme Court Act 1981 s 28(1), s 28A (as so substituted)), and the High Court may make orders of mandamus, prohibition or certiorari (now known as mandatory orders, prohibiting orders and quashing orders: see CPR 51.1(2); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 117) directed to the Crown Court in relation to jurisdiction other than in matters relating to trial on indictment (s 29(3)). Certain decisions in licensing matters are not, however, subject to the case stated procedure (s 28(2) (as so amended); nor are decisions relating to orders under the Access to Justice Act 1999 s 17 (terms of provision of funded services: see LEGAL AID vol 65 (2008) PARA 174) (Supreme Court Act 1981 s 28(4) (as so added)). The question whether the court has jurisdiction to try an indictment is a matter 'relating to trial on indictment' within s 29(3) (*R v Crown Court at Manchester, ex p DPP* [1994] 1 CMLR 457, HL) and an order of the Crown Court staying proceedings on an indictment is a decision 'relating to trial on indictment' within that provision (*Re Ashton* [1994] 1 AC 9; sub nom *R v Crown Court at Manchester, ex p DPP* [1993] 2 All ER 663, HL). See also *R v Crown Court at Chelmsford, ex p Chief Constable of the Essex Police* [1994] 1 All ER 325, DC (the Crown Court is only subject to the supervisory jurisdiction of the High Court where jurisdiction is expressly granted under the Supreme Court Act 1981 s 28 (as so amended) and s 29(3)).

7 See *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195 at 205-206, [1947] 2 All ER 170 at 172, CA, where it was held that, because a consistory court administers a system of law foreign to the common law, certiorari would not lie to such a court (although prohibition would lie); and PARA 316 post. Orders of prohibition and certiorari are now known as prohibiting orders and quashing orders: see CPR 51.1(2); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 117. As to ecclesiastical courts see PARAS 805-808 post; and ECCLESIASTICAL LAW.

8 See the text and notes 16-21 *infra*.

9 *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195 at 205, 219, [1947] 2 All ER 170 at 172, 180, CA. As to the Judicial Committee of the Privy Council where sitting to hear appeals in ecclesiastical matters see PARA 487 post. As to prohibiting orders see PARAS 314, 316 post; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 123 et seq.

10 See PARA 854 post.

11 See note 10 *supra*.

12 See PARA 853 et seq post.

13 Eg the former sheriffs' courts (see PARA 854 post), special statutory courts, which are not expressed to be superior courts, and various ecclesiastical courts (see PARAS 805-808 post; and ECCLESIASTICAL LAW).

14 See PARA 701 et seq post.

15 *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1952] 1 KB 338 at 346-347, [1952] 1 All ER 122 at 127, CA.

16 The jurisdiction of an inferior court is defined by its constitution, which is either by charter from the Sovereign, Act of Parliament or by prescription, as amended or extended by any subsequent grant or legislation or under the provisions of the Supreme Court of Judicature Act 1873 ss 88-90 (repealed), the Supreme Court of Judicature Act 1884 s 18 (repealed) and the Supreme Court of Judicature (Consolidation) Act 1925 ss 201-203 (repealed coincidentally with the demise of the jurisdiction of many inferior courts by the Administration of Justice Act 1977 s 23, Schs 4, 5 Pt V). This jurisdiction is generally limited to matters between residents in a certain locality, or to causes of action arising within prescribed metes and bounds, or to claims where the amount claimed is under a certain specified limit.

As to the jurisdiction of courts generally, and as to the territorial limits of jurisdiction, see PARA 314 et seq post; as to Admiralty jurisdiction see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 79 et seq; as to the limits on criminal jurisdiction see PARA 326 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1054 et seq; as to the limits of state jurisdiction see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 219 et seq; and as to territorial waters see WATER AND WATERWAYS vol 100 (2009) PARAS 7, 31.

17 *Peacock v Bell and Kendal* (1667) 1 Saund 69; *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195 at 205-206, [1947] 2 All ER 170 at 172, CA, per Wrottesley LJ, and see that case generally for the distinctions between superior and inferior courts and the nature and history of writs of certiorari and prohibition (now applications for judicial review).

18 *Mostyn v Fabrigas* (1775) Cowp 161, Ex Ch; *Bishop of Sodor and Man v Earl of Derby, Earl of Derby v Duke of Athol* (1751) 2 Ves Sen 337; *Nabob of Arcot v East India Co* (1791) 3 Bro CC 292; *London Corpn v Cox* (1867) LR 2 HL 239 at 260 per Willes J; *R v Johnson* (1805) 6 East 583.

19 As to the jurisdiction of the High Court see PARA 606 et seq post; and CIVIL PROCEDURE vol 11 (2009) PARAS 43-50; CIVIL PROCEDURE vol 12 (2009) PARAS 1693-1700.

20 *Read v Pope* (1834) 1 Cr M & R 302; *Kemp v Clark* (1848) 12 QB 647; *Cook v M'Pherson* (1846) 8 QB 1030; *Waldock v Cooper* (1754) 2 Wils 16; *Trevor v Wall* (1786) 1 Term Rep 151. A person relying on the decision of an inferior court as conclusive must show that the court had jurisdiction: *R v Judge Pugh, ex p Graham* [1951] 2 KB 623, [1951] 2 All ER 307, DC. As to the jurisdiction of county courts see PARA 710 et seq post; and as to where a claim may be commenced see CIVIL PROCEDURE vol 11 (2009) PARA 116.

21 *Stanton v Styles* (1850) 5 Exch 578 at 593.

22 See CIVIL PROCEDURE vol 12 (2009) PARA 1154 et seq.

23 *London Corp'n v Cox* (1867) LR 2 HL 239 at 262 per Willes J; applied in *R v Judge Pugh, ex p Graham* [1951] 2 KB 623, [1951] 2 All ER 307, DC.

24 See eg the Magistrates' Courts Act 1980 ss 123, 124 (execution of warrants of justices); and MAGISTRATES.

25 *Moravia v Sloper* (1737) Willes 30; *Carratt v Morley* (1841) 1 QB 18; *Andrews v Marris* (1841) 1 QB 3; *Houlden v Smith* (1850) 14 QB 841; *London Corp'n v Cox* (1867) LR 2 HL 239 at 263 per Willes J. As to county courts see PARA 725 post. See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 75, 201.

26 *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA; expld in *McC v Mullan* [1985] AC 528, [1984] 3 All ER 908, HL.

27 See *McC v Mullan* [1985] AC 528 at 540-541, [1984] 3 All ER 908 at 916, HL, per Lord Bridge of Harwich; cited in *Darker (suing as personal representative of Docker) v Chief Constable of the West Midlands Police* [2001] 1 AC 435, [2000] 4 All ER 193, HL, per Lord Mackay of Clashfern.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

309 Superior and inferior courts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--1981 Act s 29(3) amended: Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(ii) Classification of Courts/310. Courts exercising civil and criminal jurisdiction.

310. Courts exercising civil and criminal jurisdiction.

In general, there is a clear distinction between the civil and the criminal judicial processes¹ and each has its own structure, organisation, administration and hierarchy of courts², its own procedure, practices and rules of court³, its own modes and methods of processing its proceedings, its own rules regulating the place and mode of trial⁴, its own method of adjudicating on and disposing of its proceedings and, above all, its own system of appeals⁵. However, there is some overlap in terms of jurisdiction⁶; for example, the Queen's Bench Division of the High Court exercises jurisdiction in respect of certain criminal as well as civil matters⁷; the civil courts have jurisdiction to make orders for the seizure and confiscation of money and other property under the control of defendants in criminal cases⁸; and the criminal courts may make restitution orders and compensation orders against convicted persons⁹.

Where criminal proceedings have been properly instituted and are not vexatious or an abuse of the process of the court, it is not a proper exercise of judicial discretion for a judge in a civil court to grant the defendant in the criminal proceedings a declaration that the facts alleged by the prosecution do not in law prove the offence charged, because to make such a declaration would be to usurp the function of the criminal court without binding it, and would thus inevitably prejudice the criminal trial one way or the other¹⁰. Where criminal proceedings have not been instituted, a civil court may, however, grant a declaration as to the lawfulness or otherwise of a proposed course of conduct, for example the withdrawal of medical treatment from a patient¹¹; but it would only be proper to grant a declaration relating to the criminal law if it is clear that there is no risk of conduct being treated as criminal which is not clearly in contravention of the criminal law¹². The jurisprudence of the European Court of Human Rights¹³ has identified three principal criteria for distinguishing between civil and criminal proceedings, namely (1) the manner in which the domestic state classifies the proceedings; (2) the nature of the offence; and (3) the character of the penalty to which the proceedings may give rise¹⁴.

1 This was not always so; eg in criminal cases the defendant's oral plea of 'guilty' or 'not guilty' is a relic of the original system operating in all courts whereby pleadings were oral rather than written: see CIVIL PROCEDURE vol 11 (2009) PARA 2.

2 As to criminal procedure generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1050 et seq. As to the Crown Court see PARA 621 et seq post; and as to magistrates' courts see MAGISTRATES.

3 As to rules of court see PARA 575 et seq post.

4 Eg trial by jury (the procedure in a criminal trial on indictment) is virtually obsolete in civil proceedings: see CIVIL PROCEDURE vol 12 (2009) PARA 1132. A review of the criminal courts of England and Wales was undertaken by Lord Justice Auld and reported to the government in 2001. Among the recommendations contained in the report was a further curtailment of the right to jury trial. At the date at which this title states the law, the full text of the report was available on the Lord Chancellor's Department website at www.lcd.gov.uk and its recommendations had not been implemented.

5 As to criminal appeals see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq; and as to civil appeals see CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq.

6 See CIVIL PROCEDURE vol 11 (2009) PARA 2.

7 See PARA 613 post; and CIVIL PROCEDURE vol 11 (2009) PARA 45; CIVIL PROCEDURE vol 12 (2009) PARAS 1686, 1696-1699; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2005 et seq.

8 See the Criminal Justice Act 1988 Pt VI (ss 71-102) (as amended); the Drug Trafficking Act 1994; CPR Sch 1 RSC Ord 115; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

9 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 130, 148; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 375, 376, 388.

10 *Imperial Tobacco Ltd v A-G* [1981] AC 718, [1980] 1 All ER 866, HL.

11 See eg *Airedale NHS Trust v Bland* [1993] AC 789, [1993] 1 All ER 821, HL.

12 *A-G v Able* [1984] QB 795, [1984] 1 All ER 277.

13 As to the European Court of Human Rights see PARA 311 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 179 et seq.

14 See *R (on the application of McCann) v Manchester Crown Court* [2001] EWCA Civ 281 at [52], [2001] 4 All ER 264, [2001] 1 WLR 1084 per Lord Phillips of Worth Matravers MR. For a further discussion of the distinction between civil and criminal proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 2.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

310 Courts exercising civil and criminal jurisdiction

NOTE 8--1988 Act Pt VI and 1994 Act, for the most part, replaced by the Proceeds of Crime Act 2002. See SENTENCING AND DISPOSITION OF OFFENDERS.

NOTE 14--*McCann*, cited, affirmed: sub nom *Clingham v Kensington and Chelsea LBC; R (on the application of McCann) v Crown Court at Manchester* [2002] UKHL 39, [2002] 4 All ER 593, [2002] 3 WLR 1313.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(ii) Classification of Courts/311. Domestic and international courts.

311. Domestic and international courts.

With the exception of the Judicial Committee of the Privy Council¹, the courts of England and Wales with which this title is concerned exercise domestic jurisdiction, and thus may be contrasted with international courts exercising supra-national jurisdiction². The House of Lords, however, has jurisdiction to hear certain appeals from Scotland and Northern Ireland³; and in practice other domestic courts may exercise some extra-territorial jurisdiction both in civil⁴ and criminal⁵ matters.

The following are examples of international courts:

- 1 (1) the European Court of Justice ('ECJ')⁶;
- 2 (2) the European Court of Human Rights ('ECtHR')⁷;
- 3 (3) the International Court of Justice at the Hague⁸;
- 4 (4) the international tribunals for the former Yugoslavia and for Rwanda⁹;
- 5 (5) the International Criminal Court at the Hague, which will be brought into being from 1 July 2002¹⁰.

1 As to the Privy Council see PARA 401 et seq post.

2 As to the extent to which the judgments of international courts may be enforced see generally INTERNATIONAL RELATIONS LAW.

- 3 See PARA 360 post.
- 4 See PARA 326 et seq post; and see generally CONFLICT OF LAWS.
- 5 See generally CRIMINAL LAW, EVIDENCE AND PROCEDURE; INTERNATIONAL RELATIONS LAW.
- 6 As to European Union institutions, including the Court of Justice of the European Communities, see generally EUROPEAN COMMUNITIES. Domestic courts may refer questions of European Community law to the ECJ for a ruling on them (see CIVIL PROCEDURE vol 12 (2009) PARA 1720 et seq) and the ECJ has held, without seeking to derogate from this power, that domestic courts in member states should regard themselves as bound by ECJ decisions relating to the interpretation of particular instruments or other matters of Community law (see CIVIL PROCEDURE vol 11 (2009) PARA 101).
- 7 As to the European Court of Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 179 et seq. Decisions of the ECtHR must be taken into account by domestic courts or tribunals determining a question which has arisen in connection with a Convention right: see CIVIL PROCEDURE vol 11 (2009) PARA 102.
- 8 As to the International Court of Justice at the Hague see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 499 et seq.
- 9 The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Yugoslavia since 1991 was established by UN Security Council Resolution 827 (1993); and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994, was established by UN Security Council Resolution 955 (1994): see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 808; INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 421 et seq; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 463.
- 10 The treaty to establish an International Criminal Court was opened for signature at Rome in 1998 and required ratification by 60 countries before the court could be brought into being. The United Kingdom is a signatory and has ratified the treaty. See the International Criminal Court Act 2001; and see further EXTRADITION vol 17(2) (Reissue) PARA 1164; INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 437. The requisite number of signatures was obtained on 11 April 2002.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(iii) Publicity of Proceedings/312. Hearing to be in public.

(iii) Publicity of Proceedings

312. Hearing to be in public.

The question whether court proceedings are open to the public is distinct from the question whether the whole or part of those proceedings may be reported or disclosed¹. The European Convention on Human Rights, as incorporated into domestic law, provides that in the determination of his civil rights and obligations or of any criminal charge against him, everyone

is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment must be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice². The Civil Procedure Rules ('CPR') provide that as a general rule any hearing, including a trial, is to be in public unless one of the specified exceptions³ applies⁴. These statutory provisions fortify the common law rule that in general all cases, both civil and criminal, must be heard in open court⁵.

The general rule has no application when the court is sitting in an administrative capacity, or in cases concerning wards of court or mentally disordered persons, or where a judge, by consent, sits as an arbitrator⁶. It is also subject to a number of statutory exceptions⁷. Further, the general rule that civil proceedings must be in public does not require the court to make special arrangements for accommodating members of the public⁸; and a court has power to exclude the public in any proceedings for an offence against morality or decency when evidence is given by children or young persons⁹.

In practice there are three categories of case, those heard in open court, those heard in private and those heard in secret where the information disclosed to the court and the proceedings remain confidential¹⁰. Under the CPR, unless the hearing is required by statute to be in private, the decision as to whether to sit in public or in private is for the judge conducting the hearing¹¹. Where exclusion of the public is necessary it will not usually be right to make an exception in favour of the press¹².

The court may sit in private, either throughout the whole or part of the hearing, where it is necessary for the public safety¹³, or where the subject matter of the claim would otherwise be destroyed, for example by the disclosure of a secret process or of a secret document¹⁴, or where the court is of opinion that witnesses are hindered in, or prevented from, giving evidence by the presence of the public¹⁵.

Any person, whether professionally qualified or not, may attend a trial as a friend of either party, may take notes, and may quietly make suggestions and give advice to that party, if the court gives permission¹⁶; but such a person does not have an automatic right to be present at a private hearing¹⁷.

Where an appeal is brought against a decision of the Court of Appeal, the High Court, the Crown Court, a county court or a magistrates' court, or an application is made for leave to appeal against a decision of any of those courts, and that court had power to sit in private during the whole or any part of the proceedings in which the decision was given, the court hearing the appeal or application has power to sit in private during the whole or any part of the proceedings on the appeal or application¹⁸.

Although the family courts are not excluded from the principle of open justice, many family cases require privacy and the Family Proceedings Rules 1991¹⁹ which make particular provision for family cases to be heard in chambers²⁰ permit such proceedings to be heard in private even when they are not children cases²¹.

The power of magistrates to control their own proceedings does not entitle them to sit anonymously²².

1 As to restrictions on reporting or disclosing information about a case or hearing see PARA 313 post.

2 Human Rights Act 1998 s 1(3), Sch 1 art 6(1). For the provisions governing courts-martial see the Army Act 1955 s 94 (as amended); the Air Force Act 1955 s 94 (as amended); and ARMED FORCES.

3 The specified exceptions are that a hearing, or any part of it, may be in private if: (1) publicity would defeat the object of the hearing; (2) it involves matters relating to national security; (3) it involves confidential information (including information relating to personal financial matters) and publicity would damage that

confidentiality; (4) a private hearing is necessary to protect the interests of any child or patient; (5) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; (6) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or (7) the court considers this to be necessary, in the interests of justice: CPR 39.2(3).

4 CPR 39.2(1).

5 See *Scott v Scott* [1913] AC 417, HL; *McPherson v McPherson* [1936] AC 177, PC.

6 *Scott v Scott* [1913] AC 417 at 436, 437, 482-483, HL.

7 See eg (1) CPR 39.2(3) (see note 3 supra; and CIVIL PROCEDURE vol 11 (2009) PARA 6); (2) the Official Secrets Act 1920 s 8(4) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 504); (3) the Children and Young Persons Act 1933 s 47(2) (as amended) (youth courts: see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1267); (4) the Magistrates' Courts Act 1980 ss 65, 69 (as amended) (family proceedings: see MAGISTRATES); (5) the Adoption Act 1976 s 64 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 512); (6) the Matrimonial Causes Act 1973 s 48(2) (evidence as to sexual capacity in nullity proceedings: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 834). Children may not be present in court during the trial of any other person for an offence: see the Children and Young Persons Act 1933 s 36 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1281. As to a court's power to sit in private when hearing appeals see note 18 infra.

8 CPR 39.2(2). As a matter of administrative convenience, most small claims track trials take place in the judge's room or in a hearing room; the public may attend but this is subject to availability of space. As to the small claims track see CIVIL PROCEDURE vol 11 (2009) PARAS 267, 274 et seq.

9 See the Children and Young Persons Act 1933 s 37 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1281.

10 *Clibbery v Allan* [2002] EWCA Civ 45 at [20], [2002] 1 All ER 865, [2002] 1 FCR 385 per Dame Elizabeth Butler-Sloss P. These distinctions broadly correspond to the older categories of cases heard in open court, cases heard in chambers (ie in the judge's rooms) and cases heard in camera (ie in secret); but there was some confusion between the phrases 'in chambers' and 'in camera': see *Clibbery v Allan* supra, considering *Hodgson v Imperial Tobacco Ltd* [1998] 2 All ER 673, [1998] 1 WLR 1056, CA and *Forbes v Smith* [1998] 1 All ER 973, [1998] 2 FCR 342. Hearings in 'chambers' now normally take place in a hearing room rather than in the judge's private room: see District Judge George Harrison 'Conducting Hearings in the Civil Courts' 152 NLJ 473 (29 March 2002).

11 See *Practice Direction--Miscellaneous Provisions relating to Hearings* PD39A para 1.4. As to the Crown Court's power to sit in private see PARA 622 post.

12 See *Re Crook* [1992] 2 All ER 687, CA (decided before the CPR came into operation).

13 *R v Governor of Lewes Prison, ex p Doyle* [1917] 2 KB 254 (court-martial); *Norman v Mathews* (1916) 85 LJKB 857, DC; affd 32 TLR 369, CA (county court). See also CPR 39.2(3)(b) (national security); CPR 39.8 (certain race relations claims); and CIVIL PROCEDURE vol 11 (2009) PARA 6.

14 *Andrew v Raeburn* (1874) 9 Ch App 522; *Badische Anilin und Soda Fabrik v Levinstein* (1883) 24 ChD 156; *Mellor v Thompson* (1885) 31 ChD 55, CA; *Act für Anilin Fabrikation in Berlin v Levinstein Ltd* (1914) 31 RPC 177 at 186; on appeal (1921) 38 RPC 277, CA.

15 *Moosbrugger v Moosbrugger* (1913) 29 TLR 658; *Cleland v Cleland* (1913) 109 LT 744. See also CPR 39.2(4); and CIVIL PROCEDURE vol 11 (2009) PARA 6.

16 *McKenzie v McKenzie* [1971] P 33, [1970] 3 All ER 1034, CA; and see *R v Leicester City Justices, ex p Barrow* [1991] 3 All ER 935, CA; *R v Highbury Corner Magistrates, ex p Watkins* [1992] RA 300; *R v Wolverhampton Magistrates' Court, ex p Mould* [1992] RA 309; *Re G (Chambers Proceedings: McKenzie Friend)* [1999] 2 FLR 59, CA.

17 *R v Bow County Court, ex p Pelling* [1999] 4 All ER 751, CA; and see CIVIL PROCEDURE vol 12 (2009) PARA 1126.

18 Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 1(1), (4) (amended by the Courts Act 1971 s 56, Schs 8, 11). The court hearing the appeal or application must give its decision and the reasons for it in public unless there are good and sufficient grounds for giving them in private. Those grounds must be stated in public: Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 1(2). Where the decision against which an appeal is brought is a conviction or a sentence or other order made on conviction or

was given in the exercise of jurisdiction to punish for contempt of court, the court hearing the appeal must state in open court the order made by it: s 1(3). Any reference to a power to sit in private is a reference to a power to sit in secret or in chambers; but the power conferred on a court which has no power to sit in chambers is a power to sit in secret only: s 1(7).

19 As to the Family Proceedings Rules 1991, SI 1991/1247 (as amended) see PARA 576 post.

20 As to hearings in chambers note 10 supra. The European Court of Human Rights has held that the domestic authorities are justified in conducting proceedings in chambers in cases concerning children and that this practice is not in breach of the right to a fair and public hearing under the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969)) now incorporated into domestic law (see the Human Rights Act 1998 s 1(3), Sch 1 art 6(1); and the text and note 2 supra): see *B and anor v United Kingdom* (Applications 36337/97, 35974/97) [2001] 2 FCR 221, [2001] ECHR 36337/97, ECtHR.

21 See *Clibbery v Allan* [2002] EWCA Civ 45, [2002] 1 All ER 865, [2002] 1 FCR 385.

22 *R v Felixstowe Justices, ex p Leigh* [1987] QB 582, [1987] 1 All ER 551, DC.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

312 Hearing to be in public

NOTE 2--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

NOTE 13--CPR 39.8 omitted: SI 2006/1689.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(1) THE NATURE OF COURTS/(iii) Publicity of Proceedings/313. Restrictions on reporting.

313. Restrictions on reporting.

In the case of court proceedings held in public, any person may report the proceedings or disclose any information about the case or the hearing, subject to the rules restraining publication of information obtained by compulsory disclosure of documents¹, unless the court has imposed a reporting restriction² or there is some other form of restraint on publication³. Even in the case of proceedings in private⁴, it is not a contempt of court for a party to disclose or publicise information about the case or hearing, unless either the court has imposed a reporting restriction, the case falls within one of the specified categories⁵ or there is some other form of restriction on publication⁶. It is, for example, unlawful to publish a written report, or to broadcast a report, of any committal proceedings containing matter other than certain specified details⁷. Similarly, there are restrictions on the reporting of family proceedings in magistrates' courts⁸ and youth courts⁹. The publication of reports of matrimonial causes is limited to specified matters¹⁰ and in certain circumstances the publication of indecent material in relation to any judicial proceedings is prohibited¹¹. Additionally, in any case where a court

(having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld¹².

In sensitive cases involving children it is the practice in the Family Division and Court of Appeal, where the judgment is considered suitable for inclusion in the law reports, for an approved transcript of the judgment to be prepared in anonymised form¹³.

1 As to disclosure of documents see CIVIL PROCEDURE vol 11 (2009) PARA 538 et seq.

2 As to reporting restrictions see the text and note 11 infra.

3 As to the publication of reports of legal proceedings see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 428 et seq. As to restrictions on publication see the text and notes 7-12 infra.

4 As to proceedings in private see PARA 312 ante.

5 In one of the categories specified in the Administration of Justice Act 1960 s 12(1) (as amended): see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 431.

6 See *Clibbery v Allan* [2002] EWCA Civ 45, [2002] 1 All ER 865, [2002] 1 FCR 385 (disclosure after a hearing in chambers by one party of information given to the court by the other party; in the particular circumstances of the case it was held that such publication had not prejudiced the administration of justice). As to comments on pending proceedings see CONTEMPT OF COURT vol 9(1) (Reissue) PARAS 419 note 2, 447 note 3.

7 See the Magistrates' Courts Act 1980 ss 6, 8 (as amended); and MAGISTRATES. Magistrates may not withhold their identity from the public and the press: *R v Felixstowe Justices, ex p Leigh* [1987] QB 582, [1987] 1 All ER 551, DC. For these purposes committal proceedings include, in relation to an information charging an indictable offence, any proceedings in the magistrates' court before the court proceeds to inquire into the information as examining justices: see the Magistrates' Courts Act 1980 s 8(8).

In committal proceedings, justices should avoid imposing reporting restrictions additional to those set out in s 8 (as amended), but they may be justified in making an additional order under the Contempt of Court Act 1981 s 4(2) if prejudicial reporting occurs close in time to the committal proceedings: *R v Beaconsfield Justices, ex p Westminster Press Ltd* (1994) 158 JP 1055.

8 See the Magistrates' Courts Act 1980 s 71 (as amended); and MAGISTRATES.

9 See the Children and Young Persons Act 1933 s 49 (as substituted and amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1272 et seq. As to the power to prohibit publication of material relating to children or young persons who appear in proceedings in any court as parties or witnesses see the Children and Young Persons Act 1933 s 39 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1271.

10 See the Judicial Proceedings (Regulation of Reports) Act 1926 s 1(1)(b) (as amended); the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 s 2(1), (3) (as amended); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1015; PRESS, PRINTING AND PUBLISHING vol 36(2) (Reissue) PARA 434 et seq.

11 Judicial Proceedings (Regulation of Reports) Act 1926 s 1(1)(a). The publication of the material must be calculated to injure public morals: s 1(1)(a).

12 Contempt of Court Act 1981 s 11; see further CONTEMPT OF COURT vol 9(1) (Reissue) PARA 432.

13 See eg *S v S (rescission of decree nisi: pension sharing provision)* [2002] 1 FCR 193 at 195 (para 1) (judgment given in open court; Singer J suggesting that any report should be in anonymised form and entitled as in the citation given); *Re G (a child) (secure accommodation order)* [2001] 3 FCR 47 at 49 (Munby J indicating that judgment prepared in anonymised form and stating that although the proceedings took place in open court, nothing was to be published which might lead, either directly or indirectly, to the identification of the child involved in the case). See also *Harris v Harris, A-G v Harris* [2001] 3 FCR 193, [2001] 2 FLR 895, where the court decided that the overall balance was in favour of publication of the judgment. The European Court of Human Rights has held that the preparation of judgments in an anonymised form is not in breach of the right to a fair and public hearing under the European Convention on Human Rights art 6(1) nor of the right to freedom of expression under art 10 (those rights now incorporated into United Kingdom law as the Human Rights Act 1998 s 1(3), Sch 1 arts 6(1), 10): see *B and anor v United Kingdom* (Applications 36337/97, 35974/97) [2001] 2 FCR 221, [2001] ECHR 36337/97, ECtHR.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/314. Meaning of 'jurisdiction'.

(2) THE JURISDICTION OF COURTS

(i) In general

314. Meaning of 'jurisdiction'.

By 'jurisdiction'¹ is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision². The limits of this authority are imposed by the statute, charter or commission under which the court is constituted³, and may be extended or restricted by similar means.

If no restriction or limit is imposed the jurisdiction is said to be unlimited⁴. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognisance⁵, or as to the area over which the jurisdiction extends⁶, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal, including an arbitrator⁷, depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist, the correctness of its decision may be inquired into by means of proceedings for judicial review⁸. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing⁹. Jurisdiction must be acquired before judgment is given¹⁰.

The jurisdiction of an inferior court is not lost by mere non-user¹¹.

1 'Jurisdiction est un dignity que un home ad per un povoir de fair Justice en causes de complaint fait devant luy' (jurisdiction is a dignity which a man hath by a power to do Justice in causes of complaint made before him): Termes de la Ley, 'Jurisdiction'. 'There are three sorts of inferior jurisdiction: the first whereof is *tenere placita* which is the lowest, and the party may either sue there or in the King's Courts (ie the High Court); the second is *conusance of pleas*; and by this a right is vested in the lord of the franchise to hold pleas; and he is the only person who can take advantage of it, by claiming his franchise; the third sort is an *exempt jurisdiction*, as where the king grants to some City that the inhabitants shall be sued within their City and not elsewhere. Although there is no jurisdiction that can withstand a *certiorari* to the Superior Courts, *Crosse v Smith* (1703) 3 Salk 79 at 80': Jacob *Law Dictionary* 'Jurisdiction'. Orders of *certiorari* are now known as quashing orders: see CPR 51.1(2); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 117.

2 When the interests of the parties are not of such a nature as to give the court jurisdiction it is not the function of the courts to advise parties what their rights would be under a hypothetical case: *Bright v Tyndall* (1876) 4 ChD 189; *Glasgow Navigation Co v Iron Ore Co* [1910] AC 293, HL; *R v Schorr* (1915) 50 L Jo 344n; *Tindall v Wright* (1922) 127 LT 149, DC. The court should not express a view on the law where it is not in the

interests of the parties that a hypothetical decision should be given: *Sumner v William Henderson & Sons Ltd* [1963] 2 All ER 712n, [1963] 1 WLR 823, CA. As to whether an issue is hypothetical see eg *Re Railtrack plc (in administration)*, *Winsor v Bloom and ors* [2002] All ER (D) 105 (May) per Sir Andrew Morritt V-C. As a general rule an appeal will not be heard where there is no live issue between the parties to be decided (*Sun Life Assurance Co of Canada v Jervis* [1944] AC 111, [1944] 1 All ER 469, HL); but in exceptional circumstances the Court of Appeal may allow an appeal to proceed which has become academic (*Practice Note* [1990] 1 WLR 1108, CA); and where there is an issue involving a public authority as to a question of public law, the House of Lords has a discretion to hear an appeal even where there is no issue between the parties to be decided (*R v Home Secretary, ex p Salem* [1999] 1 AC 450, [1999] 2 All ER 42, HL). As to declaratory orders and judgments see CIVIL PROCEDURE vol 12 (2009) PARA 1145. As to the procedure to be followed when a devolution issue arises in relation to Wales, Scotland or Northern Ireland in proceedings in England and Wales generally see *Practice Note* [1999] 3 All ER 466.

3 As to the creation of courts see PARA 304 ante.

4 As to orders made by a court of unlimited jurisdiction see *Isaacs v Robertson* [1985] AC 97, [1984] 3 All ER 140, PC.

5 See PARA 322 post.

6 See PARA 326 post.

7 See *Christopher Brown Ltd v Genossenschaft Oesterreichischer Waldbesitzer Holzwirtschaftsbetriebe Registrierte GmbH* [1954] 1 QB 8 at 12, [1953] 2 All ER 1039 at 1043.

8 *R v Income Tax Special Purposes Comrs* (1888) 21 QBD 313 at 319-320, CA. Where there is a defect on the face of the proceedings a prohibiting order will be made to prevent an inferior court from continuing to hear a case in which it has no jurisdiction: see *R v Wimbledon Justices, ex p Derwent* [1953] 1 QB 380 at 389, [1953] 1 All ER 390 at 393, DC, per Lord Goddard CJ; *Thames Launches Ltd v Trinity House of Deptford Strond Corp'n* [1961] Ch 197, [1961] 1 All ER 26. See further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 123 et seq. As to prohibiting orders and quashing orders in case of excess of jurisdiction see generally para 316 post.

9 *A-G v Lord Hotham* (1827) 3 Russ 415.

10 *Thompson v Shiel* (1840) 3 Ir Eq R 135.

11 *A-G of Isle of Man v Cowley* (1859) 12 Moo PCC 27; *R v Steward of Havering-atte-Bower* (1822) 5 B & Ald 691.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

314 Meaning of 'jurisdiction'

TEXT AND NOTES--See European Parliament and EC Council Regulation 1896/2006 (OJ L399, 30.12.2006, p 1), which creates, as an alternative to the procedures existing under the laws of member states, a European order for payment procedure, and European Parliament and EC Council Regulation 861/2007 (OJ L199, 31.7.2007, p 1), which establishes, as an alternative to the procedures existing under the laws of member states, a European small claims Procedure. See also CPR Pt 78 (European order for payment and European small claims procedure); High Court and County

Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(q), (r); and CIVIL PROCEDURE vol 12 (2009) PARAS 1647-1656.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/315. When a claim may be brought.

315. When a claim may be brought.

The general rule is that wherever there exists a right recognised by the law, there exists also a remedy for any infringement of such right¹.

Wherever a person has a private right which is not merely a right enjoyed by him in common with the community at large, he may in general maintain a claim against any other person who infringes it, without proving actual damage. Every infringement, it is said, imports a damage in the nature of it, even though there is no pecuniary loss or damage², and consequently, where a private right and its infringement are proved³, it is unnecessary to show actual damages in order to maintain a claim⁴. There must, however, be a justiciable dispute⁵. Moreover, there are certain instances in which, unless special damage⁶ is caused, there is no infringement of a right; thus a person may not have an absolute right to claim that an act be done or omitted by another but merely a qualified right to claim that it be not done or omitted to his damage⁷. On the other hand, a person may sustain serious damage and yet have no cause of action because no right of his recognised by the law has been infringed⁸.

The civil courts have no jurisdiction to make declarations as to legality where the subject matter of the claim is already the subject of criminal proceedings but may otherwise grant declarations as to the lawfulness or otherwise of a proposed course of conduct⁹.

1 In the words of the old maxim, ubi jus, ibi remedium: see *Ashby v White* (1703) 2 Ld Raym 938 at 952, per Holt CJ: 'Indeed, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal'. See also *Constantine v Imperial Hotels Ltd* [1944] KB 693, [1944] 2 All ER 171; *Rees v Hughes* [1946] KB 517, [1946] 2 All ER 47; *Best v Samuel Fox & Co Ltd* [1952] AC 716, [1952] 2 All ER 394, HL. For a consideration of the different kinds of rights recognised by the law see the particular titles in this work dealing with various branches of the law of contract and tort.

2 *Ashby v White* (1703) 2 Ld Raym 938 at 955 per Holt CJ; but see the maxim de minimis non curat lex. CPR 40.20 provides that the court may make binding declarations, whether or not any other remedy is claimed: see CIVIL PROCEDURE vol 12 (2009) PARA 1145.

3 The novelty of the complaint is no objection, 'for if men will multiply injuries, actions must be multiplied too': *Ashby v White* (1703) 2 Ld Raym 938 at 955 per Holt CJ. Cases new in their principle require legislation to remedy the grievance; cases new only in the instance do not: *Pasley v Freeman* (1789) 3 Term Rep 51 at 63 per Ashhurst J; *Chapman v Pickersgill* (1762) 2 Wils 145 at 146 per Pratt CJ; *Best v Samuel Fox & Co Ltd* [1950] 2 All ER 798 at 800 per Croom-Johnson J; but see the views of the Court of Appeal as to the novelty of the claim in that case [1951] 2 KB 639, [1951] 2 All ER 116, and those of the House of Lords [1952] AC 716, [1952] 2 All ER 394.

4 See eg *Ashby v White* (1703) 2 Ld Raym 938 (denial of right to vote at parliamentary election); *Marzetti v Williams* (1830) 1 B & Ad 415 (dishonour of trader's cheque); *Jones v Jones* [1916] 2 AC 481 at 500, HL, per Lord Sumner (slander actionable per se and libel); *Ashby v White* supra at 955 per Holt CJ (trespass); *Harrop v Hirst* (1868) LR 4 Exch 43 (diversion of water); *Jones v Llanrwst UDC* [1911] 1 Ch 393 (pollution of stream); *King v Brown, Durant & Co* [1913] 2 Ch 416 (interference with right of common); *Constantine v Imperial Hotels Ltd* [1944] KB 693, [1944] 2 All ER 171 (innkeeper's refusal to accommodate traveller).

5 See eg *Balfour v Balfour* [1919] 2 KB 571, CA (domestic arrangement does not give rise to a cause of action); *Cox v Green* [1966] Ch 216, [1966] 1 All ER 268 (dispute about professional ethics); and *Thorne v University of London* [1966] 2 QB 237, [1966] 2 All ER 338, CA (dispute about university examinations a matter for the visitor).

6 In the sense of actual and temporal loss: *Ratcliffe v Evans* [1892] 2 QB 524 at 528, CA, per Bowen LJ.

7 See eg *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127 at 142, HL, per Lord Blackburn; *Neville v London Express Newspaper Ltd* [1919] AC 368 at 379-380, HL, per Lord Finlay LC. For an example of a right so qualified see WATER AND WATERWAYS vol 100 (2009) PARA 442; and see generally DAMAGES; TORT.

8 *Day v Brownrigg* (1878) 10 ChD 294 at 304, CA, per Jessel MR; *Bradford Corp v Pickles* [1895] AC 587, HL; *Hammerton v Earl of Dysart* [1916] 1 AC 57 at 84, HL, per Lord Parker; *Crofter Hand Woven Harris Tweed Co Ltd v Veitch* [1942] AC 435, [1942] 1 All ER 142, HL; *Best v Samuel Fox & Co Ltd* [1952] AC 716, [1952] 2 All ER 394, HL; *Abbott v Sullivan* [1952] 1 KB 189, [1952] 1 All ER 226, CA; *Re Hudson, Hudson v Hudson* [1966] Ch 209, [1966] 1 All ER 110. See generally TORT; and see eg INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 22 et seq (as to acts of state generally); LIBEL AND SLANDER vol 28 (Reissue) PARA 94 et seq (for privilege in relation to defamatory statements); NUISANCE vol 78 (2010) PARAS 118, 119, 125 (as to damage resulting from the use of land); EMPLOYMENT vol 41 (2009) PARA 1323 et seq (as to combinations in furtherance of trade disputes and what is actionable in relation to trade disputes and the inducing of breaches of contract); TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 344 (for the principle that there is no right to the exclusive use of a personal name).

9 See PARA 310 ante.

UPDATE

301-332 Introduction

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Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/316. Remedies where jurisdiction is exceeded.

316. Remedies where jurisdiction is exceeded.

All lawful jurisdiction is derived from and must be traced to the royal authority¹. The root principle of the English law as to jurisdiction is that the judges stand in the place of the Sovereign, in whose name they administer justice². Any exercise of unauthorised jurisdiction is a usurpation of the royal prerogative, which is unwarranted by law and may be restrained by a prohibiting order, which is a process for preventing inferior courts from intermeddling with or executing anything beyond their jurisdiction³.

A consistory court is an inferior court for this purpose⁴; and it has been suggested that an order will issue to the Judicial Committee of the Privy Council sitting as a court of appeal in ecclesiastical matters⁵. On an application by way of judicial review⁶ for a prohibiting order for want of jurisdiction the only question is whether the court below has or has not jurisdiction, and immediately the superior court is satisfied that the inferior court has exceeded its jurisdiction the order will be made no matter what stage the proceedings below have reached⁷.

If the judgment of the inferior court has been given, the Queen's Bench Division may exercise its discretionary power of having the record brought up in order that it may be quashed⁸. A quashing order (formerly known as an order of certiorari⁹) cannot lie against an ecclesiastical court since it administers a system of law foreign to the common law¹⁰. It is the duty of an appellate court to entertain a plea as to jurisdiction at any stage, even if the point was not raised in the court below¹¹. Where a point goes to the jurisdiction of any court or tribunal, it is

the duty of the judge or tribunal to draw attention to, and decide, the jurisdictional issue, even though it has not been raised by any of the parties.

Under the Human Rights Act 1998, it is unlawful for a court or tribunal to act in a way which is incompatible with a Convention right¹². A person who claims that a court or tribunal has acted (or proposes to act) in a way which is made unlawful by this provision may, if he is, or would be, the victim of the unlawful act, bring proceedings under the 1998 Act or rely on the Convention right or rights concerned in any legal proceedings¹³, but in respect of a judicial act he may only bring proceedings by exercising a right of appeal or in such other forum as may be prescribed by rules¹⁴. In such proceedings in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required¹⁵ to compensate him for any arrest or detention¹⁶. Such an award of damages is to be made against the Crown; but no award may be made unless the appropriate person, if not a party to the proceedings, is joined¹⁷.

1 *London Corpn v Cox* (1867) LR 2 HL 239 at 254 per Willes J; *United Engineering Workers' Union v Devanayagam* [1968] AC 356 at 382-383, [1967] 2 All ER 367 at 379-380, PC, per Lord Guest and Lord Devlin.

2 *John Russell & Co Ltd v Cayzer, Irvine & Co Ltd* [1916] 2 AC 298 at 302, HL.

3 See *London Corpn v Cox* (1867) LR 2 HL 239 at 254 per Willes J. For the history of the Queen's Bench Division's jurisdiction to restrain inferior courts see *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195 at 206-207, [1947] 2 All ER 170 at 173, CA.

4 *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195 at 205, [1947] 2 All ER 170 at 176, CA; see PARA 309 ante.

5 *Ex p Smyth* (1835) 3 Ad & El 719 at 724; *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at 447, HL, per Lord Blackburn. But see *Combe v Edwards* (1878) 3 PD 103 at 119 per Lord Penzance. As to appeals from ecclesiastical courts see PARA 487 post.

6 Application can be made only after leave has been granted: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 66.

7 *London Corpn v Cox* (1867) LR 2 HL 239 at 278, 280, 282. As to prohibiting orders generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 123 et seq.

8 See eg *R v Manchester Legal Aid Committee, ex p R A Brand & Co Ltd* [1952] 2 QB 413, [1952] 1 All ER 480, DC; and see generally ADMINISTRATIVE LAW. Application can be made only after leave has been granted: see note 6 supra. Certiorari (now known as a quashing order: see the text and note 9 infra) did not lie where a writ of error lay: *Groenvelt v Burwell* (1700) 1 Ld Raym 454 at 469; *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1951] 1 KB 711 at 715, [1951] 1 All ER 268 at 272, DC, per Lord Goddard CJ; affd [1952] 1 KB 338, [1952] 1 All ER 122, CA. Where error formerly lay the remedy for a court exceeding its jurisdiction will, it appears, be by appeal to the High Court: see PARA 323 post. For the right of a court to grant a prohibiting or quashing order where the jurisdiction of the inferior court depends on the existence of particular facts see PARA 314 ante.

9 See CPR 51.1(2); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 117.

10 *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White* [1948] 1 KB 195, [1947] 2 All ER 170, CA.

11 *Chief Kwame Assante v Chief Kwame Tawia* [1949] WN 40.

12 See the Human Rights Act 1998 s 6(1), (3)(a); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to Convention rights see s 1(3), Sch 1.

13 See *ibid* s 7(1).

14 See *ibid* s 9(1). This does not affect any rule of law which prevents a court from being the subject of judicial review: s 9(2). As to judicial review see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 59 et seq.

15 See required by *ibid* Sch 1, art 5(5): see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

16 Ibid s 9(3).

17 Ibid s 9(4).

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Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/317. Consent and waiver.

317. Consent and waiver.

Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court¹, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled². Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognisance of the proceedings³. No appearance or answer, however, can give jurisdiction to a limited court⁴, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter⁵. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent⁶.

1 *Green v Rutherford* (1750) 1 Ves Sen 462 at 471; *Penn v Lord Baltimore* (1750) 1 Ves Sen 444 at 446; *Jones v Owen* (1848) 5 Dow & L 669; *Lawrence v Wilcock* (1840) 11 Ad & El 941; *Lord Wellesley v Withers* (1855) 4 E & B 750; *Foster v Usherwood* (1877) 3 ExD 1, CA; *Re Aylmer, ex p Bischoffsheim* (1887) 20 QBD 258 at 262; *R v Shropshire County Court Judge* (1887) 20 QBD 242 at 248; *British Wagon Co Ltd v Gray* [1896] 1 QB 35, CA; *Re Dulles' Settlement Trusts, Dulles v Vidler* [1951] Ch 265, [1950] 2 All ER 1013, CA; *Hinde v Hinde* [1953] 1 WLR 175, CA; *Heyting v Dupont* [1964] 2 All ER 273, [1964] 1 WLR 843, CA; affg [1963] 3 All ER 97, [1963] 1 WLR 1192.

2 *R v Essex Justices* [1895] 1 QB 38, CA. As to the death of a judge and another judge continuing the hearing by consent see PARA 325 post.

3 See eg *Oulton v Radcliffe* (1874) LR 9 CP 189; *Fry v Moore* (1889) 23 QBD 395, CA; *Shrager v Basil Dighton Ltd* [1924] 1 KB 274, CA. Note, however, that a defendant in a civil claim who wishes to dispute the court's jurisdiction must first file an acknowledgment of service and does not, by doing so, lose his right to dispute that jurisdiction: see CPR 11(2), (3); and CIVIL PROCEDURE vol 11 (2009) PARA 206. Contrast the position where a party makes, or responds to, an application for pre-action disclosure, which it has been suggested may be seen as submitting to the jurisdiction of the court: see CIVIL PROCEDURE vol 11 (2009) PARA 111.

4 *Green v Rutherford* (1750) 1 Ves Sen 462.

5 *Re Hooker's Settlement, Heron v Public Trustee* [1955] Ch 55, [1954] 3 All ER 321. See also *Re H's Settlement, H v S* [1939] WN 318. However, where the parties' machinery for reaching a decision breaks down, the court will not substitute its own, although where none is provided the court may adjudicate: *Brown v Gould* [1972] Ch 53, [1971] 2 All ER 1505.

6 See eg the County Courts Act 1984 ss 18, 24 (as amended); and PARAS 710, 719 post.

As to the circumstances in which an appellate court will allow appeals by consent see CIVIL PROCEDURE vol 12 (2009) PARA 1670; and see also *Nabi v Heaton (Inspector of Taxes)* [1983] 1 WLR 626, [1983] STC 344n, CA. *Slaney (Inspector of Taxes) v Kean* [1970] Ch 243, [1970] 1 All ER 434 is no longer good law on this point.

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Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/318. Ouster of jurisdiction by agreement.

318. Ouster of jurisdiction by agreement.

An agreement purporting to oust the jurisdiction of the courts entirely is illegal and void on grounds of public policy¹; for example a provision in a testator's will which purports to empower the trustee to determine all questions and matters of doubt arising under the will and to make that determination conclusive and binding on all persons interested under the will is void on this ground².

On the other hand, an agreement that no right of action shall arise or for the postponement of the enforcement of a claim by proceedings in the courts unless and until the parties' differences have been settled in some other way, for example by arbitration, is valid and enforceable; and this may extend not only to the question of the amount which is due, but also to the question of whether any liability has been incurred³. Where an agreement confers upon an expert an exclusive jurisdiction to determine a question, the jurisdiction of the court is excluded although the court will retain jurisdiction to intervene and set aside the decision of an expert who acts outside his remit⁴. It is uncertain whether an agreement which provides that an arbitrator's award shall not be questioned even on the ground of misconduct on the arbitrator's part is contrary to the public policy⁵.

1 See eg *Baker v Jones* [1954] 2 All ER 553 at 559, [1954] 1 WLR 1005 per Lynskey J, citing *Scott v Avery* (1856) 5 HL Cas 811, and *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329 at 342, [1952] 1 All ER 1175 at 1181, CA, per Denning LJ; *Addison v Brown* [1954] 2 All ER 213, [1954] 1 WLR 779 (ouster of jurisdiction of foreign court); *Healey v Minister of Health* [1954] 2 QB 221 at 239, [1954] 2 All ER 580 at 588; affd [1955] 1 QB 221, [1954] 3 All ER 449, CA (taking away jurisdiction of court); *Leigh v National Union of Railwaymen* [1970] Ch 326, [1969] 3 All ER 1249 (no ouster of jurisdiction where a union member has not exhausted remedies available under rules). See further CONTRACT vol 9(1) (Reissue) PARAS 856-857.

2 *Re Wynn's Will Trusts, Public Trustee v Newborough* [1952] Ch 271, [1952] 1 All ER 341; see further WILLS vol 50 (2005 Reissue) PARA 478.

3 *Scott v Avery* (1856) 5 HL Cas 811; *Trainor v Phoenix Fire Assurance Co* (1891) 65 LT 825; *Horton v Sayer* (1859) 4 H & N 643; *Lee v Page* (1861) 30 LJ Ch 857; *Edwards v Aberayron Mutual Ship Insurance Society Ltd* (1876) 1 QBD 563; *Doleman & Sons v Ossett Corp* [1912] 3 KB 257, CA; *Ripley v Great Northern Rly Co* (1875) 10 Ch App 435; *Re Hansloh and Reinhold, Pinner & Co* (1895) 1 Com Cas 215; *Czarnikow v Roth, Schmidt & Co* [1922] 2 KB 478, CA. But cf *Baron v Sunderland Corp* [1966] 2 QB 56, [1966] 1 All ER 349, CA.

4 *British Shipbuilders v VSEL Consortium plc* [1997] 1 Lloyd's Rep 106.

5 *Tullis v Jacson* [1892] 3 Ch 441; *Czarnikow v Roth, Schmidt & Co* [1922] 2 KB 478 at 488, CA, per Scrutton LJ; and see *Re Davstone Estates Ltd's Leases, Manprop Ltd v O'Dell* [1969] 2 Ch 378, [1969] 2 All ER 849; and ARBITRATION.

UPDATE

301-332 Introduction

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Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/319. Ouster of jurisdiction by statute.

319. Ouster of jurisdiction by statute.

The subject's right of access to the courts may be taken away or restricted by statute¹, but the language of any such statute will be jealously watched by the courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension². Moreover a statutory provision ousting the jurisdiction of the courts must now be interpreted, as far as possible, so as to be compatible with the right to a fair and public hearing under the European Convention on Human Rights as incorporated into domestic law³.

A statute may provide that a question in dispute arising under the statute shall be determined by a minister⁴ or by a specified tribunal⁵. Whilst the court's jurisdiction is ousted where a tribunal is specified to deal with claims arising under that statute, it is otherwise if a non-exclusive tribunal is indicated⁶, and where the determination of a specified tribunal is a nullity the court will inquire into the purported determination⁷. Where an issue arises upon proceedings before the court, the court's jurisdiction to dispose of that issue can only be ousted by the plain words of a statute⁸. The extent to which, and the means by which, the validity of an order made under the authority of a statute can be questioned in the courts may be laid down by statute⁹. The supervisory jurisdiction of the High Court by way of judicial review is only excluded if there are very clear words to that effect in the statute¹⁰.

The court's jurisdiction is restricted or ousted entirely by statute in respect of the trial of offences committed against United Kingdom law by members of the armed forces of certain foreign or Commonwealth states who are on service in this country. Such offenders are tried in the United Kingdom by military courts of the visiting force to which they belong¹¹. No proceedings may be entertained in United Kingdom courts with regard to the pay or service of members of such forces¹². Provision is, however, made for the service of claim forms in civil proceedings on members of certain visiting forces¹³.

Under the Civil Procedure Rules, parties to a dispute are encouraged to consider the use of alternative dispute resolution ('ADR')¹⁴. Failure to do so may place the party who refuses to consider ADR at risk of adverse consequences in costs¹⁵.

1 See eg the Supreme Court Act 1981 s 42 (as amended) (vexatious litigants); and CIVIL PROCEDURE vol 11 (2009) PARA 258. In addition, statutory provisions may give finality of decision and thereby exclude an appeal: see eg the Supreme Court Act 1981 s 28(2) (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1688. In other cases no appeal lies unless conferred by statute: see PARA 323 post; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 72. For a case where any rule of law ousting magistrates' jurisdiction is not to apply see the Criminal Damage Act 1971 s 7(2). Cf also the Industrial Relations Act 1971 s 114(2) (repealed) (former power to exclude appellate jurisdiction of courts by transfer of certain appeals from industrial tribunals (now known as employment tribunals)).

2 *Re Vexatious Actions Act 1896, Re Boaler* [1915] 1 KB 21 at 36, CA, per Scrutton J; *Goldsack v Shore* [1950] 1 KB 708 at 712, [1950] 1 All ER 276 at 277, CA, per Evershed MR; see further STATUTES vol 44(1) (Reissue) PARA 1349. In *Chester v Bateson* [1920] 1 KB 829, and *Newcastle Breweries Ltd v R* [1920] 1 KB 854, the court held to be invalid provisions in Defence Regulations purporting to deprive the subject of the right of access to the courts on the ground that they were not authorised by the Act under which they purported to be made. See also *A-G v Wilts United Dairies* (1922) 91 LJB 897, HL; *R and W Paul Ltd v Wheat Commission* [1937] AC 139, [1936] 2 All ER 1243, HL; *Bennett and White (Calgary) Ltd v Sugar City Municipal District (No 5)* [1951] AC 786 at 808-809, PC; *Francis v Yiewsley and West Drayton UDC* [1957] 2 QB 136 at 148 (affd [1958] 1 QB 478, [1957] 3 All ER 529, CA); *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, [1959] 3 All ER 1, HL; *Customs and Excise Comrs v Cure and Deeley Ltd* [1962] 1 QB 340, [1961] 3 All ER 641; *Secretary of State for Employment v Wellworthy Ltd (No 2)* [1976] ICR 13; *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union* [1981] AC 363, [1980] 2 All ER 689, PC.

3 As to the right to a fair and public hearing see the Human Rights Act 1998 s 1(3), Sch 1 art 6(1); para 312 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to application for a declaration of incompatibility see s 4; and CIVIL PROCEDURE vol 11 (2009) PARA 596; CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 *East Midlands Gas Board v Doncaster Corpn* [1953] 1 All ER 54, [1953] 1 WLR 54; *Gillingham Corpn v Kent County Council* [1953] Ch 37, [1952] 2 All ER 1107, applying *Joseph Crosfield & Sons Ltd v Manchester Ship Canal Co* [1904] 2 Ch 123, CA; on appeal [1905] AC 421, HL. See also *Department of Health and Social Security v Walker Dean Walker Ltd* [1970] 2 QB 74, [1970] 1 All ER 757.

5 Eg under the Agricultural Holdings Act 1986 a dispute as to the operation of s 2(1) in relation to any 'agreement' within the meaning of that subsection is to be determined by arbitration: see 2(4); and AGRICULTURAL LAND vol 1 (2008) PARA 327. But the court alone has jurisdiction to determine what constitutes such an 'agreement': *Goldsack v Shore* [1950] 1 KB 708, [1950] 1 All ER 276, CA.

6 See PARA 723 post.

7 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL. See also *Re Racal Communications Ltd* [1981] AC 374, [1980] 2 All ER 634, HL.

8 *A-G v Boden* [1912] 1 KB 539 at 561 per Hamilton J; and see *Ealing London Borough Council v Race Relations Board* [1972] AC 342, [1972] 1 All ER 105, HL; cf *Baron v Sunderland Corpn* [1966] 2 QB 56, [1966] 1 All ER 349, CA.

9 See eg the Acquisition of Land Act 1981 s 23 (compulsory purchase orders); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 612. For the effect of a provision that an order made under an Act is to have effect as if enacted by the Act see *Minister of Health v R, ex p Yaffé* [1931] AC 494, HL, explaining and distinguishing *Patent Agents Institute v Lockwood* [1894] AC 347, HL.

10 As to judicial review see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 58 et seq.

11 See the Visiting Forces Act 1952 s 3 (as amended), ss 4, 8. As to NATO forces see the Agreement regarding the Status of Forces of Parties to NATO 1955 (Cmd 9363); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 325.

12 Visiting Forces Act 1952 s 6; see further ARMED FORCES.

13 See CIVIL PROCEDURE vol 11 (2009) PARA 150.

14 See CPR 1.4(2)(e); and CIVIL PROCEDURE vol 11 (2009) PARA 35. As to the Civil Procedure Rules see PARA 575 post.

15 See *Dunnett v Railtrack plc (in railway administration)* [2002] All ER (D) 314 (Feb), CA; and CIVIL PROCEDURE vol 12 (2009) PARA 1739.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/320. Necessity for speaking order.

320. Necessity for speaking order.

In certain cases the power of a court to review the decision of another court or tribunal or of a body of persons entrusted by law with a discretion may depend upon its ability to inform itself of the reasons for the decision. Where an application is made for judicial review to remove a decision of a statutory tribunal into the High Court to be quashed, not on the ground that the tribunal exceeded its jurisdiction but on the ground that its decision was wrong in law, the application can be granted only if the error of law is apparent on the face of the record of the proceedings¹. More recently what constitutes the 'record' has been more widely interpreted; it is not confined to the formal order, but extends to the oral or written reasons given by the judge or tribunal².

On an appeal as to the judge's exercise of his discretion, even though the judge may have given no reasons, it may nevertheless be possible to say on looking at the facts that, if the judge had taken into consideration all relevant facts and had excluded all irrelevant facts, he could not have arrived at the conclusion to which he came³. Where it is sought to impeach the exercise by trustees of a discretionary power of maintenance of a beneficiary who is a minor⁴ or the exercise by company directors of a power to refuse registration of a transfer of shares⁵ or the valuation put upon a company's shares by auditors⁶, the court cannot interfere unless the motives for the decision have been disclosed⁷.

When a judge is giving reasons for his decision, not every factor which weighs with him in his appraisal of the evidence has to be identified and explained, but the issues whose resolution is vital to his conclusion should be identified and the manner in which he resolves them explained⁸.

1 *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1952] 1 KB 338, [1952] 1 All ER 122, CA. As to the requirements that tribunals should give reasons for their decisions see the Tribunals and Inquiries Act 1992 s 10 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 112.

2 *R v Crown Court at Knightsbridge, ex p International Sporting Club (London) Ltd* [1982] QB 304, [1981] 3 All ER 417, DC.

3 *Grimshaw v Dunbar* [1953] 1 QB 408, [1953] 1 All ER 350, CA. As to appeal from the exercise of a judicial discretion see eg CIVIL PROCEDURE vol 12 (2009) PARA 1661.

4 As to such powers see further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 54 et seq. As to the exercise of discretion by trustees see generally TRUSTS.

5 See COMPANIES vol 14 (2009) PARA 393.

6 *Dean v Prince* [1953] Ch 590, [1953] 2 All ER 636; on appeal [1954] Ch 409, [1954] 1 All ER 749, CA.

7 As to the grounds on which a valuation can be impeached where the basis on which it is made is disclosed in the valuation see *Dean v Prince* [1954] Ch 409, [1954] 1 All ER 749, CA, applying *Collier v Mason* (1858) 25 Beav 200 at 204 per Romilly MR.

8 *English v Emery Reimbold & Strick Ltd, D J & C Withers (Farms) Ltd v Ambic Equipment Ltd, Verrechia (t/a Freightmaster Commercials) v Metropolitan Police Comr* [2002] All ER (D) 302 (Apr), CA.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

320 Necessity for speaking order

NOTE 8--A judgment must allow the parties and an appellate court to understand the reasons behind a decision: *Baird v Thurrock BC* [2005] All ER (D) 81 (Nov), CA.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(i) In general/321. Judicial exercise of jurisdiction.

321. Judicial exercise of jurisdiction.

It is a principle of natural justice¹ that judgement should only be given on evidence made known to all parties², but in some cases statute has expressly sanctioned a departure from this principle³, and in other cases the principle has been subordinated to some other principle⁴. In civil proceedings it is improbable that to adopt, in special circumstances, a procedural course which the defendant has himself requested, even though it is a course which is undesirable in general, will amount to a denial of justice to him such as will enable him to have the proceedings set aside⁵.

1 As to the principles of natural justice see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 95-96.

2 *Official Solicitor v K* [1965] AC 201 at 237, [1963] 3 All ER 191 at 208, HL, per Lord Devlin; but see also *Re D (infants)* [1970] 1 All ER 1088, [1970] 1 WLR 599, CA, where it was held that certain case records of local authorities were privileged, distinguishing *Official Solicitor v K* supra.

3 Eg a children's guardian's report to the court is confidential under the Adoption Rules 1984, SI 1984/265, r 6(11) (r 6 amended by SI 2001/819). The parties to the proceedings are not entitled to see it except so far as the court thinks fit to disclose it: *Re JS (an infant)* [1959] 3 All ER 856, [1959] 1 WLR 1218; *Re PA (an infant)* [1971] 3 All ER 522, [1971] 1 WLR 1530, CA (decided under earlier legislation). The report of a Lord Chancellor's

visitor made under the Mental Health Act 1983 s 103 and information contained in such a report must not be disclosed except to the judge and any person authorised by the judge to receive the disclosure: see s 103(8); and MENTAL HEALTH vol 30(2) (Reissue) PARA 747. A report of a probation officer etc on a convicted young offender can be considered without its being read aloud (Magistrates' Courts (Children and Young Persons) Rules 1992, SI 1992/2071, r 10(2)(d)); however, copies of any written report before the court must be made available to the minor's legal representative, if any, and his parent or guardian, and also to the minor himself except where the court otherwise directs on the ground that it appears to it impracticable to disclose the report having regard to his age and understanding or undesirable to do so having regard to potential serious harm which might thereby be suffered by him (r 10(3)). As to withholding disclosure of certain documents on the grounds of the public interest see CIVIL PROCEDURE vol 11 (2009) PARAS 574-579.

4 See eg *Official Solicitor v K* [1965] AC 201, [1963] 3 All ER 191, HL (in wardship proceedings the court may rely on a report of the Official Solicitor, without disclosing its contents to the parties, if it considers that this is necessary for the minor's welfare, since this is the paramount consideration in such cases). In *Fowler v Fowler and Sine* [1963] P 311, [1963] 1 All ER 119, CA, the judge at the conclusion of argument conversed privately with the welfare officer, without protest by the parties, before making an order for custody, and the order was set aside on appeal. This case should now be considered in the light of *Official Solicitor v K* supra.

5 See *Chua Chee Chor v Chua Kim Yong* [1963] 1 All ER 102, [1962] 1 WLR 1464, PC.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(ii) Original and Appellate Jurisdiction/322. Unlimited and limited original and appellate jurisdiction.

(ii) Original and Appellate Jurisdiction

322. Unlimited and limited original and appellate jurisdiction.

The jurisdiction of courts is either original or appellate, and in either case may be unlimited or limited as to the nature of the claims and matters of which the particular court has cognisance. The Judicial Committee of the Privy Council has jurisdiction in every kind of proceedings, as its appellate jurisdiction is not only co-extensive as regards classes of claims with that of the House of Lords and that of the Supreme Court of England and Wales¹, but also includes jurisdiction in criminal matters, and it is the ultimate court of appeal from all civil courts from which appeal does not lie to the Supreme Court or to the House of Lords².

In the case of all other courts there is some limitation, be it greater or less, of the classes of claims or matters of which they have cognisance. Where a court is given original jurisdiction in a matter, it seems unlikely that it can also exercise its appellate jurisdiction in that matter³. This extent of the jurisdiction of particular courts is discussed elsewhere in this title under each particular court⁴.

1 As to the Supreme Court of England and Wales (ie the Court of Appeal, the High Court and the Crown Court) see PARA 601 post.

2 See PARAS 403 et seq, 416 et seq post. The House of Lords also has jurisdiction to hear criminal appeals: see PARA 362 post.

3 *R v Governor of Brixton Prison, ex p De Demko* [1959] 1 QB 268, [1958] 3 All ER 360, CA; affd sub nom *De Demko v Home Secretary* [1959] AC 654, [1959] 1 All ER 341, HL. See also *Megarity v Law Society, Gayway Linings Ltd v Law Society* [1982] AC 81, [1981] 1 All ER 641, HL, where definitions of 'court of first instance' and 'appellate court' are given.

4 See PARA 601 et seq post.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(ii) Original and Appellate Jurisdiction/323. Appeal.

323. Appeal.

At common law, proceedings in error lay from any inferior court of record of civil jurisdiction to the King's Bench or Common Pleas¹. Rights of appeal are now conferred by statute² and permission to appeal is required, subject to very limited exceptions³, in all cases to which the Civil Procedure Rules apply⁴.

Permission to appeal is required in the case of all appeals from the High Court or the Court of Appeal in England and Wales to the House of Lords⁵.

1 Proceedings in error were expressly abolished as regards criminal proceedings by the Criminal Appeal Act 1907 s 20(1) (repealed), and as regards civil proceedings in the High Court by the Supreme Court of Judicature Act 1875 Sch 1, Rules of Court, Ord 58 r 1 (annulled). Proceedings in error from inferior civil courts were impliedly superseded by the Supreme Court of Judicature Act 1873 s 45 (repealed), which provided that appeals from inferior courts should be heard by Divisional Courts of the High Court: see *Le Blanch v Reuter's Telegram Co* (1876) 1 ExD 408 at 410, CA; *Darlow v Shuttleworth* [1902] 1 KB 721 at 727.

2 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq.

3 The exceptions are appeals against (1) a committal order; (2) a refusal to grant habeas corpus; or (3) a secure accommodation order: see CPR 52.3(1)(a); and CIVIL PROCEDURE vol 12 (2009) PARA 1660.

4 See CIVIL PROCEDURE vol 12 (2009) PARA 1659 et seq.

5 As to appeals to the House of Lords see PARA 360 et seq post.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(ii) Original and Appellate Jurisdiction/324. Meaning of 'the court' and 'a judge'.

324. Meaning of 'the court' and 'a judge'.

It has generally been held that the expression 'the court' used in a statute means a judge or judges sitting in open court¹ and 'a judge' means a judge sitting in chambers² and that the expression 'the court or a judge' gives jurisdiction to judges sitting either in open court or in chambers³. However, under the Civil Procedure Rules ('CPR') hearings are now classified into public and private hearings so that the former approach may not apply⁴. For the purposes of the CPR, 'judge' means, unless the context otherwise requires, a judge, master or district judge or a person authorised to act as such⁵. With certain exceptions masters and district judges of the Supreme Court may exercise the jurisdiction of the court or a judge⁶. Similarly, district judges in the county courts may exercise the jurisdiction of a judge⁷.

In the absence of statutory authority, express or implied, functions of a judicial nature cannot be delegated⁸.

1 *Baker v Oakes* (1877) 2 QBD 171, CA; *Re Davidson, ex p Davidson* [1899] 2 QB 103, DC; *Clover v Adams* (1881) 6 QBD 622, DC; *Friend v Wallman* [1946] KB 493, [1946] 2 All ER 237, CA. It is submitted that the authorities are not easily reconcilable on the question whether 'the court' by itself may necessarily exclude all jurisdiction in chambers. In *Baker v Oakes* supra and *Re Davidson, ex p Davidson* supra, which were respectively an application for costs under the Supreme Court of Judicature Act 1875 Sch 1, Rules of Court, Ord 55 (annulled), and an application for costs under the Solicitors Act 1888 s 13 (repealed), the Court of Appeal and the Divisional Court respectively decided the jurisdiction of the court in banc was exclusive. Both cases were cited in *Friend v Wallman* supra, where Somervell LJ in a reserved judgment at 498 and at 239 said: 'The word "court" can clearly in ordinary language bear different meanings according to context. Considering the matter apart from authority it is obvious, for example, that the words "an application to the court" may in certain contexts mean an application in chambers; in others, an application to the judge at the trial or otherwise in open court'. After commenting on the facts and Brett LJ's judgment in *Baker v Oakes* supra, he continued '... In recent years, the expression "the court or a judge" has been frequently used, and in this expression "the court" means a judge or judges in open court, and "a judge" means a judge sitting in chambers. We are however clear, both on authority and principle, that there is no rigid rule which compels us to construe the word "court" as excluding jurisdiction exercised in chambers. Regard must be had to the context and to the ordinary practice which the legislature must be assumed to know'. See also *Cooke v Newcastle and Gateshead Water Co* (1882) 10 QBD 332, where 'court' was held to mean Divisional Court, and *Re Bellman* [1963] P 239, [1963] 1 All ER 513, where 'a judge in London' was held to mean a judge in chambers.

2 See the cases cited in note 3 supra; and see also *Re B* [1892] 1 Ch 459 at 463, CA; *Dallow v Garrold* (1884) 14 QBD 543 at 546, CA.

3 *Friend v Wallman* [1946] KB 493, [1946] 2 All ER 237, CA. See also the Supreme Court Act 1981 s 19(3)(b) (meanings of 'the High Court', 'the court' and 'the court or a judge'); and CIVIL PROCEDURE vol 11 (2009) PARA 22.

4 As to public and private hearings see PARA 312 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 6.

5 CPR 2.3(1).

6 See PARA 654 et seq post; CPR 2.4; and CIVIL PROCEDURE vol 11 (2009) PARA 49. As to the allocation of cases between judges, masters and district judges see CIVIL PROCEDURE vol 11 (2009) PARA 50.

7 See CPR 2.4; and CIVIL PROCEDURE vol 11 (2009) PARA 61. As to the allocation of cases between judges, district judges and deputy district judges see CIVIL PROCEDURE vol 11 (2009) PARA 62.

8 *Barnard v National Dock Labour Board* [1953] 2 QB 18 at 33-34, 39-40, [1953] 1 All ER 1113 at 1115, 1118, CA; *Vine v National Dock Labour Board* [1957] AC 488, [1956] 3 All ER 939, HL; and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 31.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

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325. Death of judge.

Where the judge dies during a trial with a jury another judge has no jurisdiction to continue the trial, even with the consent of the parties, but a fresh trial must be commenced¹. Where, however, the presiding judge dies during proceedings without a jury, after some of the witnesses have been called, another judge may at the parties' request preside at the continuation of the same hearing if there is no conflict of evidence and after reading the shorthand notes of the evidence, and the witnesses who have given that evidence need not be recalled².

Where one of the members of an appellate court dies after the hearing but before judgment has been delivered, it would seem that a judgment written by the deceased member before his death may be adopted by one of the other members as his own, if it is to stand as part of the decision of the court³.

The Lord Chancellor⁴ may reimburse additional costs incurred by a party as a result of the death or incapacity of a judge, subject to a prescribed limit⁵.

1 *Coleshill v Manchester Corpn* [1928] 1 KB 776 at 786, CA, per Scrutton LJ. See also *Bolton v Bolton* [1949] 2 All ER 908, DC; *The Forest Lake* [1968] P 270, [1966] 3 All ER 833, where the dictum of Scrutton LJ in *Coleshill v Manchester Corpn* supra was distinguished; and *Chua Chee Chor v Chua Kim Yong* [1963] 1 All ER 102, [1962] 1 WLR 1464, PC.

2 *Re British Reinforced Concrete Engineering Co Ltd's Application* (1929) 45 TLR 186. See also *Hallam v Hallam* (1930) 47 TLR 207. For the principle that the jurisdiction of the High Court is to be exercised, except where otherwise provided by statute or rules of court, by a single judge see the Supreme Court Act 1981 s 19(3).

3 See eg *IRC v Wilsons (Dunblane) Ltd* [1954] 1 All ER 301 at 305, [1954] 1 WLR 282 at 288, HL, where Lord Normand delivered as his own an opinion prepared by Viscount Simon before his death. See also *Re McConnell, Hunter v McConnell* [1956] NI 151 (leave given to enter appeal for rehearing where two remaining judges did not agree).

4 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 See the Administration of Justice Act 1985 s 53 (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1756.

UPDATE

301-332 Introduction

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Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(iii) Area of Jurisdiction/326. Extent of jurisdiction.

(iii) Area of Jurisdiction

326. Extent of jurisdiction.

The jurisdiction of English courts of law is limited (1) by the stipulations contained in the enactments by which the kingdoms of Scotland and Ireland were incorporated in the United Kingdom¹; (2) by the legislation devolving powers to the Welsh Assembly, Northern Ireland Assembly and Scottish Parliament²; (3) by the charters of justice, letters patent and statutes affecting particular Commonwealth states and dependencies³; (4) by international rules and Conventions⁴; and (5) by the consideration that no English court will decide any question where it has no power to enforce its decree⁵.

The Sovereign may sue a subject in her own courts and the Crown may be sued by a subject in those courts in the same manner, in general, as that in which subjects may sue each other⁶.

A foreign sovereign or state may sue in English courts, but cannot in general be sued, although this immunity may be waived by a submission to the jurisdiction⁷.

The jurisdiction of each particular court is that which the Queen has delegated to it. This delegation has been complete in the sense that the Queen does not and cannot try cases herself⁸.

It has been held that, provided a court has jurisdiction to try a prisoner before it, the fact that he was improperly arrested outside the jurisdiction is irrelevant⁹. However, the forcible bringing of a person within the jurisdiction in disregard of extradition procedures and in breach of international law and the laws of the state in which he was found may amount to an abuse of the process of the court; and the High Court may inquire into the circumstances and in its discretion stay the prosecution¹⁰.

1 See eg the Union with Scotland Act 1706 art xix; the Union with Ireland Act 1800 art 8. As to the application of the 1706 Act art xix to the execution of a Scottish warrant in England see *R v Metropolitan Police Comr, ex p Bennett* [1995] QB 313, [1995] 3 All ER 248, DC.

2 See the Government of Wales Act 1998 s 109, Sch 8 (devolution issues); the Scotland Act 1998 s 98, Sch 6 (devolution issues); s 103 (Judicial Committee of the Privy Council); the Northern Ireland Act 1998 s 79, Sch 10 (devolution issues); para 409 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See generally COMMONWEALTH.

4 See generally CONFLICT OF LAWS.

5 See PARA 327 post. As to the limits of the state's jurisdiction see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 115 et seq; and as to the limits on criminal jurisdiction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1054 et seq.

6 See CIVIL PROCEDURE vol 11 (2009) PARA 219; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 381 et seq; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 107 et seq.

7 See the State Immunity Act 1978 ss 1, 2; and CIVIL PROCEDURE vol 11 (2009) PARA 221; INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 244.

8 'The King hath committed all his power judiciall, some in one court and some in another, so as if any would render himself to the judgment of the King in such case where the King hath committed all his power judiciall to others, such a render should be to no effect (YB 8 H 4 fo 19). The King doth judge by his judges (the King having distributed his power judiciall to several courts), and the King hath wholly left matters of judicature according to his lawes to his judges (YB 8 Hen 6 fo 20)': 4 Co Inst 70, 71.

9 *R v Officer Commanding Depot Battalion RASC Colchester, ex p Elliott* [1949] 1 All ER 373, DC; and see ADMINISTRATIVE LAW (2001 Reissue) PARA 227; INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 233.

10 See *Bennett v Metropolitan Police Comr* (1997) 10 Admin LR 245, [1997] All ER (D) 8, applied in *Darker (as personal representative of Docker) v Chief Constable of the West Midlands Police* [2001] 1 All ER 435, [2000] 4 All ER 193, HL; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 233.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

326 Extent of jurisdiction

NOTE 2--Government of Wales Act 1998 s 109, Sch 8 now Government of Wales Act 2006 s 149, Sch 9: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42G.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(iii) Area of Jurisdiction/327. Claims relating to land.

327. Claims relating to land.

At common law the English court had no power to enforce its decisions in questions as to the title to or delivery up of land or trespass to land outside the realm and would not normally entertain claims to try such matters¹, unless a fiduciary relationship existed between the parties². This rule has now been modified by statute³.

1 *British South Africa Co v Companhia de Moçambique* [1893] AC 602, HL; *Re Charteris, Charteris v Kenyon* [1917] 2 Ch 257; *Murray v Secretary of State for India in Council* [1931] WN 91, CA.

2 *Deschamps v Miller* [1908] 1 Ch 856 at 863.

3 See the Civil Jurisdiction and Judgments Act 1982 s 30 (as amended); and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 393 et seq.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(iii) Area of Jurisdiction/328. Other claims.

328. Other claims.

Personal claims of a transitory nature¹, whether in contract or in tort, are within the jurisdiction of the English court, even if the cause of action arose abroad, and a claim in respect of an assault committed by a foreigner on a foreigner abroad may be tried by an English court if process can be properly served².

A court exercising equitable jurisdiction will compel the performance of contracts or trusts and entertain claims for the foreclosure of mortgages or for accounts in relation to property even if that property is outside local geographical jurisdiction³. The same applies with regard to claims relating to property abroad in which relief is sought on the ground of fraud or undue influence, since fraud or undue influence is upon the conscience of the party⁴. The essential requirement is that the defendant must be resident within the jurisdiction and where the court can enforce and execute its order by its process⁵.

These rules are subject to the limitations imposed by the Civil Jurisdiction and Judgments Act 1982 on the exercise of jurisdiction by the English courts in cases covered by the Brussels Conventions⁶.

Admiralty jurisdiction is dealt with elsewhere in this work⁷.

1 'It is now too late for us to inquire whether it were wise or politic to make a distinction between transitory and local actions; it is sufficient for the courts that the law has settled the distinction, and that an action quare clausum fregit is local. We may try actions here which are in their nature transitory, though arising out of a transaction abroad; but not such as are in their nature local': *Doulson v Matthews* (1792) 4 Term Rep 503 at 504 per Buller J. 'Our courts are said to be more open to admit actions founded upon foreign transactions than

those of any other European country; but there are restrictions in respect of locality, which exclude some foreign causes of action altogether, namely those which would be local if they arose in England, such as trespass to land; and even with respect to those not falling within that description, our courts do not undertake universal jurisdiction': *Phillips v Eyre* (1870) LR 6 QB 1 at 28, Ex Ch, per Willes J; and see *Boys v Chaplin* [1968] 2 QB 1 at 11, [1968] 1 All ER 283, CA, affd sub nom *Chaplin v Boys* [1971] AC 356, [1969] 2 All ER 1085, HL.

2 Down to Lord Mansfield's time it was doubted whether a tort committed abroad could be tried here, but in *Mostyn v Fabrigas* (1775) 1 Cowp 161, Ex Ch, it was decided that the jurisdiction of the English court extends so far: see *British South Africa Co v Companhia de Moçambique* [1893] AC 602 at 614, HL; and see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 392 et seq. As to foreign penalties and revenue cases see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 33; and as to submissions to the jurisdiction see CONFLICT OF LAW vol 8(3) (Reissue) PARA 62 et seq.

3 See *Ewing v Orr Ewing* (1883) 9 App Cas 34 at 40, HL, per Lord Selbourne LC, and PARA 719 post; and see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 432 et seq.

4 *Lord Arglasse v Muschamp* (1682) 1 Vern 76: see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 432 et seq.

5 *Matthaei v Galitzin* (1874) LR 18 Eq 340. For a fuller treatment of this subject see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 396 et seq.

6 See generally CONFLICT OF LAWS.

7 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 79 et seq.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

328 Other claims

NOTE 5--See *Tehrani v Secretary of State for the Home Department* 2004 SLT 97, IH (Court of Session has no judicial review jurisdiction where decision makers are located in England).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(iii) Area of Jurisdiction/329. Limited jurisdiction.

329. Limited jurisdiction.

Although the jurisdiction of the superior courts extends in civil cases over the whole of England and Wales, the town of Berwick-upon-Tweed and the foreshore to low water mark¹, not all English courts have the whole of the jurisdiction described in the preceding paragraphs². Thus, the county courts and any other local civil courts have only had a jurisdiction limited in area conferred upon them, and the jurisdiction of such courts is strictly limited to the district defined by the statute or royal grant by which they are created or regulated³.

1 1 Chitty's Archbalds' Practice (14th Edn) 4.

2 See PARAS 326-328 ante.

3 As to the jurisdiction of county courts see PARA 707 et seq post; as to the jurisdiction of local courts see PARA 853 post; and as to the necessity of showing that a matter is within the court's jurisdiction see PARA 309 ante.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(2) THE JURISDICTION OF COURTS/(iii) Area of Jurisdiction/330. Service out of the jurisdiction.

330. Service out of the jurisdiction.

Provision is made by the European Council service regulation¹ and by the Civil Procedure Rules² and a practice direction supplementary thereto³ for service of a claim form outside the jurisdiction of the English courts.

Provision has also been made for service of foreign process within the jurisdiction⁴.

1 See EC Council Regulation 1348/2000 (OJ L160, 30.06.2000, p 37); and CIVIL PROCEDURE vol 11 (2009) PARA 157 et seq.

2 See CPR 6.17-31; and CIVIL PROCEDURE vol 11 (2009) PARA 169 et seq.

3 See *Practice Direction--Service out of the Jurisdiction* PD 6B; and CIVIL PROCEDURE vol 11 (2009) PARAS 156, 169 et seq.

4 See CIVIL PROCEDURE vol 11 (2009) PARA 181.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

330 Service out of the jurisdiction

NOTE 1--From 13 November 2008, Regulation 1348/2000 repealed and replaced by European Parliament and EC Council Regulation 1393/2007 (OJ L324, 10.12.2007, p 79) on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (service of documents).

NOTE 2--CPR Pt 6 substituted: SI 2008/2178.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(3) RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION/331. Rights of audience.

(3) RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION

331. Rights of audience.

The 'right of audience' means the right to appear before and address a court, including the right to call and examine witnesses¹. Prior to the reforms introduced by the Courts and Legal Services Act 1990, practising barristers had an exclusive right of audience in the Crown Court and in all the superior courts, subject to certain limited exceptions. They also had an exclusive right of audience in certain tribunals. Solicitors, however, had a right of audience in the county courts and magistrates' courts².

The question whether a person has a right of audience before a court or in relation to any proceedings is now to be determined solely in accordance with the provisions of Part II³ of the Courts and Legal Services Act 1990⁴. Those provisions, as originally enacted, laid down a procedure under which professional bodies such as the Law Society and the General Council of the Bar, and certain other bodies, were authorised to grant rights of audience to their members in some or all categories⁵. Solicitors were able to obtain rights of audience in the superior courts after obtaining a qualification from the Law Society as a solicitor-advocate⁶. There continued to be restrictions on the exercise of rights of audience by employed barristers⁷. The Access to Justice Act 1999 amended the relevant provisions of the 1990 Act, so that every barrister and every solicitor is now deemed to have been granted a right of audience by his or her professional body, exercisable in accordance with the qualification regulations and rules of conduct of that body which have been approved⁸ by the Lord Chancellor⁹.

A court may not limit the right to appear before it in any proceedings to only some of those who have that right by virtue of the relevant statutory provisions¹⁰.

An individual litigant may act in person in the civil courts and may be assisted at a hearing by another person if the court gives permission¹¹. A company or other corporation may be represented at trial by an employee if the employee has been authorised by the company or corporation to appear on its behalf and the court gives permission¹². Any person may exercise rights of audience in proceedings dealt with as a small claim in accordance with rules of court¹³; but a lay representative may not exercise any right of audience where his client does not attend the hearing, at any stage after judgment, or on any appeal brought against any decision made by the district judge in the proceedings¹⁴.

The right of an accused to defend himself in the criminal courts is discussed elsewhere in this work¹⁵ as are the rights of local authority officers and other persons to conduct prosecutions for certain offences in magistrates' courts¹⁶ and bring enforcement proceedings before certain courts and tribunals¹⁷.

Persons appointed to certain judicial offices must hold rights of audience¹⁸.

1 Courts and Legal Services Act 1990 s 119(1) (definition amended by the Access to Justice Act 1999 s 43, Sch 6 paras 4, 10). For these purposes, 'court' (1) includes any tribunal which the Council on Tribunals is under a duty to keep under review (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57); (2) any court-martial (see ARMED FORCES); and (3) a statutory inquiry within the meaning of the Tribunals and Inquiries Act 1992 s 16(1) (as amended) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15): Courts and Legal Services Act 1990 s 119(1) (definition amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 35).

2 See generally LEGAL PROFESSIONS. As to the Lord Chancellor's power to direct that specified categories of persons in legal employment may address a county court see the County Courts Act 1984 s 61 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARA 500. As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Ie the Courts and Legal Services Act 1990 Pt II (ss 17-70) (as amended): see the text and notes 4-10 infra; and LEGAL PROFESSIONS vol 65 (2008) PARA 495 et seq.

4 See the Courts and Legal Services Act 1990 s 27(1); and LEGAL PROFESSIONS vol 65 (2008) PARA 497. As to the general principle governing the grant of rights of audience and the statutory duty of those exercising the function of granting such rights see ss 17, 18 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARAS 495-496; and as to the offences of acting in the purported exercise of a right of audience or pretending to be entitled to exercise rights of audience see LEGAL PROFESSIONS vol 65 (2008) PARAS 584-585.

5 As to the provisions relating to the designation of professional or other bodies for the purposes of the granting of rights of audience and the approval of their qualification regulations and rules of conduct see LEGAL PROFESSIONS. As to the rights of audience of members of the Institute of Legal Executives see the Institute of Legal Executives Order 1998, SI 1998/1077; and LEGAL PROFESSIONS vol 65 (2008) PARA 592.

6 As to the professional conduct of solicitors acting as advocates see LEGAL PROFESSIONS.

7 See further LEGAL PROFESSIONS. As to the rights of audience of employed advocates see now the Courts and Legal Services Act 1990 ss 31A, 31B (added by the Access to Justice Act 1999 ss 37, 38) (Crown Prosecutors and advocates and litigators employed by the Legal Services Commission); the Access to Justice Act 1999 s 41 (barristers employed by solicitors etc); and LEGAL PROFESSIONS. As to exercising rights of audience where a person ceases to be a member of one authorised body and becomes a member of another see the Courts and Legal Services Act 1990 s 31C (added by the Access to Justice Act 1999 s 39); and LEGAL PROFESSIONS.

8 Ie approved for the purposes of the Courts and Legal Services Act 1990 s 27 (as amended) in relation to that right: see LEGAL PROFESSIONS vol 65 (2008) PARA 497.

9 See *ibid* s 31(1), (2)(a) (substituted by the Access to Justice Act 1999 s 36); and LEGAL PROFESSIONS. A person does not have a right of audience by virtue of the Courts and Legal Services Act 1990 s 31(1) (as so substituted) (barristers' rights of audience) if he has not been called to the Bar by an Inn of Court, or if he has been disbarred, or is temporarily suspended from practice, by order of an Inn of Court: s 31(3) (as so substituted). As to disciplinary proceedings against barristers see LEGAL PROFESSIONS.

10 *Ibid* s 27(8A) (added by the Access to Justice Act 1999 s 43, Sch 6 para 6).

11 See PARA 312 the text and notes 16-17 ante; and CIVIL PROCEDURE vol 12 (2009) PARA 1126. A branch of the Citizens Advice Bureau sited inside the Royal Courts of Justice gives help and advice to litigants in person. The increasing number of litigants in person and the importance of catering for their needs was acknowledged in Lord Woolf's Report *Access to Justice* (1996) Ch 17. The recommendations of this report formed the basis of the new civil procedure introduced with effect from 26 April 1999: see CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq.

12 See CIVIL PROCEDURE vol 12 (2009) PARA 1126.

13 Lay Representatives (Right of Audience) Order 1999, SI 1999/1225, art 3(1). See further PARA 706 post. As to small claims hearings in county courts see CIVIL PROCEDURE vol 11 (2009) PARA 274 et seq.

14 *Ibid* art 3(2).

15 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1314.

16 See MAGISTRATES.

17 See eg the Value Added Tax Tribunals Rules 1986, SI 1986/590, r 25; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1279; VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 365; and see generally LOCAL GOVERNMENT vol 69 (2009) PARA 573. See also the County Courts Act 1984 s 60 (as amended) (right of local authority officers to address the district judge in certain housing cases); and PARA 706 post.

18 See eg the Supreme Court Act 1981 s 10(3) (as amended); and PARA 515 post.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

331 Rights of audience

NOTE 1--Definition of 'court' further amended: Tribunals, Courts and Enforcement Act 2007 Sch 8 para 15; Armed Forces Act 2006 Sch 17.

NOTE 11--The rights of a litigant in person cannot be delegated to an unqualified agent: *Gregory v Turner*; *R (on the application of Morris) v North Somerset Council* [2003] EWCA Civ 183, [2003] 2 All ER 1114.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/1. INTRODUCTION/(3) RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION/332-350. Rights to conduct litigation.

332-350. Rights to conduct litigation.

The 'right to conduct litigation' means the right to issue proceedings before any court and to perform any ancillary functions in relation to proceedings, such as entering appearances to claims¹. Prior to the reforms introduced by the Courts and Legal Services Act 1990, solicitors had a monopoly of the paid exercise of this right². The question whether a person has a right to conduct litigation, or any category of litigation, is now to be determined solely in accordance with the provisions of Part II³ of the Courts and Legal Services Act 1990⁴. Those provisions, as originally enacted, enabled the Law Society and certain other authorised bodies (but not the General Council of the Bar⁵) to grant rights to their members to conduct litigation in some or all categories⁶. The Access to Justice Act 1999 amended the relevant provisions of the 1990 Act, so that both the General Council of the Bar and the Institute of Legal Executives⁷ are specifically named as authorised bodies which may grant rights to their members to conduct litigation⁸. Every solicitor is deemed to have been granted by the Law Society a right to conduct litigation in relation to every court and all proceedings, exercisable in accordance with the qualification regulations and rules of conduct of the society approved⁹ by the Lord Chancellor¹⁰.

A court may not limit the right to conduct litigation in relation to proceedings before it to only some of those who have that right by virtue of the relevant statutory provisions¹¹.

An individual claimant may conduct his case in person¹².

The conduct of criminal proceedings is discussed elsewhere in this work¹³.

¹ Courts and Legal Services Act 1990 s 119(1) (definition amended by the Access to Justice Act 1999 s 43, Sch 6 paras 4, 10). The statutory definition refers to entering appearances to actions, but under the new civil

procedure actions are now known as 'claims': see CIVIL PROCEDURE vol 11 (2009) PARA 18. For the meaning of 'court' for these purposes see PARA 331 note 1 ante.

2 See generally LEGAL PROFESSIONS.

3 le the Courts and Legal Services Act 1990 Pt II (ss 17-70) (as amended): see the text and notes 4-12 infra; and LEGAL PROFESSIONS vol 65 (2008) PARA 495 et seq.

4 See the Courts and Legal Services Act 1990 s 28(1); and LEGAL PROFESSIONS vol 65 (2008) PARA 498. As to the general principle governing the grant of rights to conduct litigation and the statutory duty of those exercising the function of granting such rights see ss 17, 18 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARAS 495-496; and as to the offences of acting in the purported exercise of rights of litigation or pretending to be entitled to conduct litigation see LEGAL PROFESSIONS vol 65 (2008) PARAS 584-585.

5 As to the General Council of the Bar see LEGAL PROFESSIONS.

6 As to the provisions relating to the designation of professional or other bodies for the purposes of the granting of rights to conduct litigation and the approval of their qualification regulations and rules of conduct see LEGAL PROFESSIONS.

7 As to the Institute of Legal Executives see LEGAL PROFESSIONS vol 66 (2009) PARA 1464.

8 See the Courts and Legal Services Act 1990 s 28(5)(aa), (ab) (added by the Access to Justice Act 1999 s 43, Sch 6 para 7).

9 le approved in relation to the right for the purposes of the Courts and Legal Services Act 1990 s 28 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 498.

10 Ibid s 31(2)(b) (substituted by the Access to Justice Act 1999 s 36). As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

11 Courts and Legal Services Act 1990 s 28(4A) (added by the Access to Justice Act 1999 s 43, Sch 6 para 7).

12 As to litigants in person see PARA 331 note 11 ante.

13 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1098 et seq.

UPDATE

301-332 Introduction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(i) The House of Commons/351. Jurisdiction of the House of Commons.

2. THE HIGH COURT OF PARLIAMENT

(1) ORIGINAL JURISDICTION

(i) The House of Commons

351. Jurisdiction of the House of Commons.

The House of Commons consists of members elected as representatives of constituencies in England and Wales, Scotland and Northern Ireland¹. Although the House of Commons together with the Sovereign and House of Lords forms the High Court of Parliament it is not strictly speaking a judicial body². Its original jurisdiction, which may be viewed as judicial, is confined to bills of attainder and of pains and penalties³. In addition the House has jurisdiction over persons for committing any breach of the privileges of the House or of any of its members⁴. The House has long surrendered its judicial jurisdiction on petition, original and appellate⁵.

1 See PARLIAMEN vol 78 (2010) PARA 892 et seq.

2 See PARA 301 ante.

3 See PARA 355 post. It used to be exercisable in relation to divorce bills, but these are now obsolete.

4 See PARLIAMENT vol 78 (2010) PARA 1096 et seq.

5 See PARA 359 post.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(ii) The House of Lords/352. Composition of the House of Lords.

(ii) The House of Lords

352. Composition of the House of Lords.

The House of Lords comprises the Lords Spiritual and the Lords Temporal. The Lords Spiritual are the Archbishops of Canterbury and York; the Bishops of London, Durham and Winchester; and 21 other diocesan bishops of the Church of England according to seniority of appointment to diocesan sees¹. The Lords Temporal are the Earl Marshal²; the Lord Great Chamberlain³; 90 elected hereditary peers⁴; Lords created for life under the Appellate Jurisdiction Act 1876 to serve as Lords of Appeal in Ordinary⁵; and life peers created under the Life Peerages Act 1958⁶. Those under the age of 21⁷, aliens⁸, those convicted of treason⁹ and bankrupts¹⁰ are disqualified from membership of the House.

A member of the House may not take his seat until he has obtained his writ of summons¹¹. Writs of summons are issued by direction of the Lord Chancellor¹² from the office of the Clerk of the Crown in Chancery. New writs are issued before the meeting of each Parliament to all Lords

Spiritual and Temporal who have established their right to them. An archbishop, on appointment or translation to another see, and a bishop who has become entitled to sit or who already has a seat and is translated to another see, applies for a writ to the Lord Chancellor with evidence to support his claim.

Writs, called writs of assistance or writs of attendance, are also sent to the following, if not a member of the House: the Lord Chief Justice¹³, the Master of the Rolls¹⁴, the President of the Family Division¹⁵, the Vice-Chancellor¹⁶, the Lords Justices of Appeal¹⁷, the Justices of the High Court of England and Wales¹⁸, the Attorney General and the Solicitor General¹⁹. Obedience to these writs is now confined to the State Opening of Parliament²⁰.

The oath of allegiance must be taken or solemn affirmation made by all members before they can sit and vote in the House. The oath must be taken on first sitting in the House²¹, in every new Parliament²² and after a demise of the Crown²³. Any member of the House who sits or votes without having taken the oath is subject to a penalty of £500 to be recovered by proceedings in the High Court²⁴.

Members of the House are to attend the sittings of the House. If they cannot attend, they should obtain leave of absence. A member of the House who has been granted leave of absence is expected not to attend sittings of the House until his leave has expired or been terminated, except to take the oath of allegiance²⁵. A member of the House on leave of absence who wishes to attend during the period for which leave was granted is expected to give notice in writing to the Clerk of the Parliaments at least one month before the day on which he wishes to attend; and his leave is terminated one month from the date of this notice, or sooner if the House so directs²⁶.

There is no retirement age for members of the House of Lords, except that bishops retire from their sees on reaching the age of 70 and cease to be members of the House²⁷; and Lords of Appeal in Ordinary retire from their judicial office at 70 years of age²⁸, but remain as members of the House²⁹.

1 See PARLIAMENT vol 78 (2010) PARA 829. For the origin of the right by which Lords Spiritual sit in the House of Lords see PARLIAMENT vol 78 (2010) PARA 829.

2 House of Lords Act 1999 s 2(2).

3 See note 2 supra.

4 The House of Lords Act 1999 excludes from automatic membership of the House present and future holders of a hereditary peerage by virtue of such a peerage. Ninety hereditary peers (and also the holders of the office of Earl Marshal and Lord Great Chamberlain) are excepted from this general exclusion and remain as members for their lifetime or until a subsequent Act provides otherwise: see s 2. In accordance with this provision and *HL Standing Orders (Public Business)* (2001) no 9, 75 of the 90 excepted hereditary peers were elected by the hereditary peers in their political party or Cross-bench grouping. The remaining 15 were elected by the whole House to act as Deputy Chairmen and other office-holders. Standing Order 9 provides that after the end of the first session of the Parliament after that in which the House of Lords Act 1999 was passed, any vacancy due to the death of one of the 90 shall be filled by holding a by-election. If the vacancy is among the 75, only the excepted hereditary peers in the relevant party or Cross-bench grouping are entitled to vote. If the vacancy is among the 15, the whole House is entitled to vote. The Clerk of the Parliaments maintains a register of hereditary peers who wish to stand in any by-election under Standing Orders 10 and 10A. Hereditary peers in the peerage of England, Scotland, Great Britain or the United Kingdom are entitled to be included in the register.

5 As to Lords of Appeal in Ordinary see PARA 369 post.

6 See PARLIAMENT vol 78 (2010) PARA 843.

7 *HL Standing Orders (Public Business)* (2001) no 2.

8 By the Act of Settlement (1700 or 1701) s 3 'no person born out of the Kingdoms of England, Scotland or Ireland, or the Dominions thereunto belonging ... (except such as are born of English parents)' may be a member of either House. This provision does not, however, apply to Commonwealth citizens or citizens of the

Republic of Ireland: s 3 (amended by the British Nationality Act 1981 s 52(6), Sch 7). For the meaning of 'Commonwealth citizen' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM.

9 Anyone convicted of treason is disqualified for sitting or voting as a member of the House of Lords until he has either suffered his term of imprisonment or received a pardon: see the Forfeiture Act 1870 s 2 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1818; PARLIAMENT vol 78 (2010) PARA 840. See also *Erskine May's Parliamentary Practice* (22nd Edn, 1997) Ch 3.

10 A member of the House adjudged bankrupt, or in Scotland a member of the House whose estate is sequestered, is disqualified for sitting and voting in the House of Lords or in any committee of the House: see the Insolvency Act 1986 s 427 (as amended); and PARLIAMENT vol 78 (2010) PARA 840. A writ is not issued to any person, who would otherwise be entitled to one, while he is so disqualified. The court certifies the bankruptcy or sequestration and its termination to the Lord Chancellor as Speaker of the House and it is recorded in the Journals of the House.

11 *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2000) PARA 1.08.

12 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

13 As to the Lord Chief Justice see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

14 As to the Master of the Rolls see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

15 As to the President of the Family Division see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

16 As to the Vice-Chancellor see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

17 As to the Lords Justices of Appeal see PARAS 515, 637 post.

18 As to High Court judges see PARAS 515, 602, 619 post.

19 As to the Attorney General and the Solicitor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.

20 See PARA 370 post.

21 Parliamentary Oaths Act 1866 s 3.

22 *HL Standing Orders (Public Business)* (2001) no 75(1).

23 See PARLIAMENT vol 78 (2010) PARA 1015.

24 Parliamentary Oaths Act 1866 s 5 (amended by the Supreme Court of Judicature (Consolidation) Act 1925 ss 18, 224(1)).

25 *HL Standing Orders (Public Business)* (2001) no 22; see also PARLIAMENT vol 78 (2010) PARA 844.

26 *HL Standing Orders (Public Business)* (2001) no 22(5); *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2000) PARAS 1.27-1.28.

27 Ecclesiastical Offices (Age Limit) Measure 1975 s 1(1), (3). See also PARLIAMENT vol 78 (2010) PARA 830.

28 See the Judicial Pensions and Retirement Act 1993 s 26; and PARA 535 post. See also PARA 369 note 10 post.

29 See the Appellate Jurisdiction Act 1876 s 6 (amended by, inter alia, the Statute Law Revision Act 1894); and PARA 369 post.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

352 Composition of the House of Lords

NOTE 8--1981 Act Sch 7 amended: see the Electoral Administration Act 2006 s 18(7), Sch 2; and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 231.

NOTE 10--The 1986 Act s 427 no longer applies to England and Wales; as to the disqualification of bankrupts from Parliament, the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, where the bankruptcy occurs in England and Wales: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 697A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(ii) The House of Lords/353. Original jurisdiction generally.

353. Original jurisdiction generally.

The original jurisdiction of the House of Lords is that in impeachment¹ and over peerage claims². In addition the House has jurisdiction over any breach of its privileges³. It was formerly the privilege⁴ of a peer⁵ to be tried by his peers, in cases of treason, felony or misprision of felony⁶. The privilege of peerage in criminal proceedings was abolished in 1948 and the jurisdiction and procedure in the trial of peers is now the same as in the case of Her Majesty's other subjects⁷. Before 1693 the House, with increasing irregularity, considered and determined original judicial petitions. The House has neither received nor considered such a petition since that year⁸.

1 See PARAS 355-356 post.

2 See PARAS 357-358 post; and see PEERAGES AND DIGNITIES vol 79 (2008) PARA 841 et seq.

3 See PARLIAMENT vol 78 (2010) PARA 1096 et seq. See also the *Report from the Joint Committee on Parliamentary Privilege* (Session 1998-99), HL Paper 43-I.

4 The privilege could not be waived: 3 Co Inst 30; *R v Lord Dacres* (1535) Kel 56.

5 An instance of the trial of a peer under the privilege is to be found in *R v Earl Russell* 133 Lords Journals 290, [1901] AC 446, HL. The last trial under the privilege was that of Lord de Clifford in 1936: 168 Lords Journals 33.

6 *R v Lord Vaux* (1612) 1 Bulst 197. The privilege did not apply in cases of misdemeanour: see eg *R v Lord Kylsant* [1932] 1 KB 442. If Parliament was sitting the trial was in the Court of The King in Parliament and a peer was appointed as Lord High Steward for the occasion to preside over the court, but he had no judicial functions beyond his fellow peers. The office of Lord High Steward was not necessary for the constitution of the court (see *Fost* 143), and if no Lord High Steward was appointed the Lord Chancellor presided in his capacity as Speaker of the House of Lords. If Parliament was not sitting the trial was in the Court of the Lord High Steward who was similarly appointed, and who in this instance was the sole judge of law and practice. No case of a trial before the court has occurred since 1689: 11 State Tr 510. The procedure is discussed in 2 Hawk PC (8th Edn) c 44.

The distinction between felony and misdemeanour has now been abolished and the offence of misprision of felony no longer exists: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49.

7 The privilege was abolished by the Criminal Justice Act 1948 s 30, in turn repealed by the Criminal Law Act 1967 which superseded the provision.

8 See Holdsworth *History of English Law* (7th Edn) vol I pp 365-368.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(ii) The House of Lords/354. Attainder.

354. Attainder.

Proceedings against accused persons by bill of attainder¹ are in usual legislative form² and follow the stages of a public bill, but the accused may be heard by counsel and call witnesses before both Houses. Such bills have generally been introduced in the House of Lords³. The power has not been resorted to since the Act of 1746 which attainted 47 men for their part in the Jacobite rising begun the previous year⁴. A lesser punishment than the capital penalty attached in the past to attainder can be achieved by a bill of pains and penalties. Such bills follow the same procedure as that for attainder⁵. The procedure is of historical rather than current interest but the power has not been abolished⁶.

1 A bill to declare a person attainted, that is to say, under the stain or corruption of blood formerly incurred by a criminal condemned for treason or felony.

2 Accordingly the bishops can take full part, which they could not in criminal trials under privilege of peerage.

3 See *Erskine May's Parliamentary Practice* (20th Edn, 1983) p 68.

4 26 Lords Journals 581-585, 589-590. The last person to be executed pursuant to an Act of Attainder was Archibald Cameron in 1753 in pursuance of the 1746 Act: 19 Howell *State Trials* 735-738. See also 4 Hatsell *Precedents of Proceedings in the House of Commons* (1818) pp 319-320. As to capital punishment see further PARA 380 note 7 post.

5 The last bill of pains and penalties was that introduced (but not passed) against Queen Caroline, Consort of George IV, in 1820: 53 Lords Journals 253-762 passim.

6 *Erskine May's Parliamentary Practice* (22nd Edn, 1997) p 63.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(ii) The House of Lords/355. Impeachment; jurisdiction.

355. Impeachment; jurisdiction.

The House of Lords exercises an original jurisdiction¹ in regard to an impeachment by the House of Commons of any individual, either peer or commoner, for any crime whatever. This solemn form of trial was of frequent occurrence in earlier periods of English history, but has not been resorted to since the case of Viscount Melville in 1806². The Commons are the accusers and the Lords are the judges 'exercising at once the functions of a High Court of Justice and of a jury'³. A pardon under the Great Seal cannot be pleaded in bar of an impeachment⁴, but the Crown may pardon the offender after conviction. The jurisdiction is of historical rather than current interest but the power has not been abolished⁵.

1 See 4 Hatsell *Precedents of Proceedings in the House of Commons* (1818) 423, App 10; *Erskine May's Parliamentary Practice* (20th Edn, 1983) p 68.

2 29 State Tr 550.

3 *Erskine May's Parliamentary Practice* (20th Edn, 1983) p 68. For the privileges of Lords Spiritual as to being present at an impeachment see PARA 356 note 3 post.

4 Act of Settlement (1700 or 1701) s 3; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 823.

5 *Erskine May's Parliamentary Practice* (22nd Edn, 1997) p 63.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(ii) The House of Lords/356. Impeachment; procedure.

356. Impeachment; procedure.

The right to institute an impeachment belongs exclusively to the House of Commons. When a motion has been agreed to by that House, the mover is instructed to go to the House of Lords and impeach the offender of high crimes and misdemeanours and acquaint the Lords that the Commons 'will, in due time, exhibit particular articles against him, and make good the same'.

The House of Commons appoints a committee to draw up the articles of impeachment for the approval of the House. The Commons then send the articles to the Lords while reserving the right to send further articles if the Commons think them necessary; and the Lords make an order for a copy of the articles to be granted to the accused person, to each of which he is directed to put in his answer within a specified time¹. On receipt of the answers the Lords communicate them to the Commons, who may reply if thought necessary.

The day for the hearing is fixed by the House of Lords. If the accused is a peer, a Lord High Steward is appointed to preside, while if a commoner is on trial the Lord Chancellor presides. The Commons attend the trial as a committee of the whole House, and their case is put forward by certain of their members whom the House appoints as its managers to prepare the evidence and conduct the prosecution on its behalf. The accused person may summon witnesses and may be heard by counsel².

All members of the House of Lords³ are equally judges of law and of fact. The presiding Lord has merely to regulate the procedure and is a judge of law to no greater extent than any other peer, with a vote in the same manner as other members of the House. In determining whether the charges have been proved, each article of the impeachment is taken separately, the presiding Lord asking each peer in turn (by precedent beginning with the junior baron) whether the defendant is guilty or not guilty⁴; and then announcing the result.

If the accused is declared to be guilty, he may plead matters in arrest of judgment; and in no case is judgment delivered by the Lords until it has been demanded by the Speaker on behalf of the Commons⁵.

1 As soon as the articles of impeachment have been exhibited the accused may be attached. If he is a peer, he is committed by order of the House of Lords in safe custody to the Gentleman Usher of the Black Rod: see the case of the Earl of Oxford in 1715 (20 Lords Journals 112). If the accused is a commoner, the House of Commons orders the Serjeant-at-Arms to attach him and to keep him under arrest until the House of Lords orders the Gentleman Usher of the Black Rod to take the accused into custody: see the case of Dr Sacheverell (16 Commons Journals 242). The Lords may admit an accused person to bail.

2 Proceedings are not brought to a conclusion by prorogation or dissolution: see 4 Hatsell *Precedents of Proceedings in the House of Commons* (1818) pp 273, 274n.

3 The bishops have a right to be present at criminal trials by the House of Lords, but by the canon law they are prohibited from voting in capital cases. They therefore asked leave to be absent from the judgment and, this being granted, they withdrew under protest, 'saving to themselves and their successors all such right in judicature as they have by law, and of right ought to have': see 133 Lords Journals 290. By the Constitutions of Clarendon it was declared that bishops ought to take part in trials in The King's Court until it came to a question of life or limb. As to capital punishment see further PARA 380 note 7 post.

4 In reply each peer stands in his place and, laying his right hand upon his breast, answers '[not] guilty upon my honour'.

5 See the resolution of the Commons on the impeachment of the Earl of Winton in 1721 (18 Commons Journals 405). For the form in which the Commons demand judgment see 4 Hatsell *Precedents of Proceedings in the House of Commons* (1818) p 232n. Except in the case of a capital offence, it would appear that on an impeachment the House of Lords has the power to inflict any punishment which it deems expedient: see the sentences passed on Viscount St Alban (3 Lords Journals 105-106); on Goudet and others (16 Lords Journals 337-338); on Dr Sacheverell (19 Lords Journals 121-122); and on Lord Macclesfield (22 Lords Journals 559).

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(ii) The House of Lords/357. Peerage claims; jurisdiction.

357. Peerage claims; jurisdiction.

The House of Lords exercises an original jurisdiction in regard to matters of peerage¹. Proof of succession is not required for any purpose of inheritance, but is required for inclusion on the Lord Chancellor's roll of the Lords² and on the Clerk of the Parliaments' register of candidates who wish to stand in a by-election for the elected hereditary peers³. From the time of Charles II all doubtful or contested claims to peerage have been referred to the House by the Crown not least because (until the passing of the House of Lords Act 1999⁴) the determination of such a claim affected the membership of the House. The Crown acts on the recommendations of the House⁵ made by humble Address following a resolution of the House made on report from the Committee for Privileges. The jurisdiction of the House extends to claims to Irish peerages, although peers of Ireland do not sit in the House.

1 The jurisdiction arises on reference by the Crown: see *Earl of Waterford's Case* (1832) 6 Cl & Fin 133, HL; *Lord De La Warre's Case* (1597) 11 Co Rep 1a.

2 The document was maintained by the Clerk of the Parliaments (and, before him, by Garter King of Arms) until the House of Lords Act 1999 was passed. The Lord Chancellor has now taken on the duty of maintaining the document. The roll is the authoritative list of the complete peerage and is evidence in cases of dispute (Lords Journals II 195, I 23, IV 39-40).

3 See PARA 352 note 4 ante.

4 See PARA 352 ante.

5 See the *Third Report from the Select Committee on the Dignity of a Peer of the Realm* (Session 1821-22), HL Paper 118 (29 July 1822), Division I. Straightforward claims may be settled by the Crown on the report of the Attorney General and without reference to the House eg Barony of Fitzwalter in 1953. See also PEERAGES AND DIGNITIES.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(1) ORIGINAL JURISDICTION/(ii) The House of Lords/358. Peerage claims; procedure.

358. Peerage claims; procedure.

Where membership of the House is not concerned, the procedure¹ on a claim to a peerage of England, Scotland, Great Britain or the United Kingdom is by way of petition² to the Crown which the Crown refers to the House of Lords with a report on it by the Attorney General or the Lord Advocate³. The House then refers the claim to the Committee for Privileges. This Committee is appointed for each session, and in peerage claims the Committee cannot sit unless three or more Lords of Appeal are present⁴. The Crown is represented before the Committee by a law officer, and all parties may appear by counsel, but no party will be heard without first lodging a printed case containing proofs in support of or in opposition to the claim⁵. The Committee passes a resolution which it reports to the House⁶; the House then agrees to a resolution which is submitted to the Crown⁷.

A hereditary peer (not previously in receipt of a writ of summons) or successor thereto who wishes to be included in the Clerk of the Parliaments' register of candidates who wish to stand in a by-election for the elected hereditary peers⁸ must petition⁹ the House to prove his succession. Such petitions are referred to the Lord Chancellor to consider and report upon whether the petitioner has established his right to be included in the register¹⁰. The procedure on a claim to an Irish peerage is similarly by direct petition to the House of Lords, the petition being referred by the House to the Lord Chancellor for his report¹¹. Where the Lord Chancellor is not satisfied that the right has been established, he reports this to the House and the petition is referred to the Committee for Privileges¹².

1 See also PEERAGES AND DIGNITIES vol 79 (2008) PARA 841 et seq.

2 For a form of petition see Court Forms.

3 For a form of report see Court Forms.

4 *HL Standing Orders (Public Business)* (2001) no 77. As to the Lords of Appeal see PARA 365 post.

5 For a form of case see Court Forms.

6 The decisions of the Committee for Privileges are not judgments and are not binding in another claim, even though the circumstances attending the claim and the point of law arising upon it may be precisely the same: see *Wiltes' Peerage Claim* (1869) LR 4 HL 126 at 147 et seq; *Viscountess Rhondda's Claim* [1922] 2 AC 339 at 377, HL. For a form of report see Court Forms.

7 184 Lords Journals 278-279.

8 See PARA 352 note 4 ante.

9 The usual prayer is 'that Your Lordships will be pleased to declare that Your Petitioner has established his succession to the Barony of [*title claimed*] and direct the Clerk of the Parliaments to enter Your Petitioner as Baron [*title claimed*] on the register of hereditary peers who wish to stand in any by-election for election to Your Lordships' House'. It is usual for the petitioner to discuss the form of his petition with the office of the Clerk of the Crown in Chancery before preparing his petition.

10 *HL Standing Orders (Public Business)* (2001) no 10A. As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

11 *HL Standing Orders (Public Business)* (2001) no 79.

12 No such petition has yet been considered by the Committee for Privileges, though that of Viscount Mountgarret claiming the Earldoms of Ormond and Ossory in the Peerage of Ireland was referred to the Committee on 30 November 2000, the Lord Chancellor having reported that 'the petition was proper to be considered by the Committee for Privileges'. The petition was withdrawn on 24 January 2001.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(i) In general/359. Origins of appellate jurisdiction.

(2) APPELLATE JURISDICTION AND PROCEDURE

(i) In general

359. Origins of appellate jurisdiction.

The appellate jurisdiction of the High Court of Parliament arises as an extension of the forum of The King's Council¹. In 1399 the Commons declared, by petition to The King, that they had no role in this jurisdiction, which belonged only to The King and the Lords. That this was the case was confirmed by The King's answer to the petition². That the jurisdiction was vested only in the Lords was also stated by all the judges in 1485³. This position has not since been questioned by either the courts or by Parliament⁴. The judicial jurisdiction to which these statements relate was both original⁵ and appellate. The appellate jurisdiction is now further regulated by statute⁶. Appellate petitions are now addressed directly to the House of Lords but continue to pray that the matter of the order or judgment appealed against 'may be reviewed before Her Majesty The Queen in Her Court of Parliament'⁷. Judgments made during the parliamentary session⁸ state that judgment is given 'by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty The Queen assembled'.

1 See Pollock and Maitland *History of English Law before the time of Edward I* (1968) pp 198-200; and Holdsworth *History of English Law* (7th Edn) vol I pp 362-365.

2 III Parliament Rolls 427 no 79 (3 November 1399, 1 Henry IV).

3 I Yearbook Henry VII, Pasch pl 5, 19v-20r.

4 The clarity of the position is questioned in *R and R v Knollys* [1694] Holt pp 531-532; Co Inst (1817) Pt 4 p 23; and Hale (ed Hargrave) *Jurisdiction of the House of Lords* (1796) Ch 22.

5 See PARAS 352-353 ante.

6 See PARAS 360-387 post.

7 Appellate Jurisdiction Act 1876 s 4.

8 See also PARA 373 post.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

359 Origins of appellate jurisdiction

TEXT AND NOTE 7--Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/A. JURISDICTION/360. Civil appeals generally.

(ii) The House of Lords

A. JURISDICTION

360. Civil appeals generally.

The House of Lords is the ultimate court of appeal in the United Kingdom of Great Britain and Northern Ireland. An appeal lies to the House of Lords:

- 6 (1) from any order or judgment of the Court of Appeal in England and Wales¹, with the permission of that court or, if refused, by leave of the House of Lords², subject to restrictions in respect of specific matters³;
- 7 (2) from any order or judgment of any court in Scotland from which error or appeal lay on or immediately before 1 November 1876 by common law or by statute⁴. Leave to appeal from an interlocutor of the Inner House of the Court of Session is not normally required⁵;

- 8 (3) from any order or judgment of the Court of Appeal in Northern Ireland, with the permission of that court or, if refused, by leave of the House of Lords, subject to statutory restrictions⁶;
- 9 (4) subject to statutory restrictions, direct from a decision of the High Court in England and Wales by leave of the House of Lords⁷; and
- 10 (5) subject to statutory restrictions, direct from a decision of the High Court in Northern Ireland by leave of the House of Lords⁸.

No appeal lies to the House of Lords from:

- 11 (a) a refusal by the Court of Appeal to grant leave to appeal to that court from a judgment of a lower court, or from any other preliminary decision of the Court of Appeal in respect of a case in which leave to appeal to the Court of Appeal was not granted⁹;
- 12 (b) a decision of the High Court refusing leave for the institution or continuance of, or the making of any application in, any civil proceedings by a person who is the subject of an order restraining him from bringing vexatious legal proceedings¹⁰ unless leave to present such a petition has been granted by the High Court or a judge thereof, other than a petition for leave to appeal against the order itself¹¹;
- 13 (c) a decision of the Court of Appeal on any appeal from a county court in any probate proceedings¹²;
- 14 (d) a decision of the Court of Appeal on an appeal from a decision of the High Court on a question of law under Part III of the Representation of the People Act 1983 (legal proceedings)¹³.

In cases involving civil contempt of court, an appeal may be brought with the permission of that court or, if refused, by leave of the House of Lords¹⁴. Where the decision of the court below is a decision on appeal under the same section of the same Act, leave to appeal to the House of Lords will only be considered if the court below certifies that a point of law of general public importance is involved in that decision¹⁵.

1 Appellate Jurisdiction Act 1876 s 3(1). As to the Court of Appeal see PARA 634 et seq post.

2 Administration of Justice (Appeals) Act 1934 s 1(1). As to applications to the House of Lords for leave to appeal to the House see PARA 378 post.

3 For these restrictions see PARAS 363-364 post.

4 Appellate Jurisdiction Act 1876 s 3(2). 1 November 1876 was the commencement date of the Appellate Jurisdiction Act 1876: see s 2 (repealed).

5 Court of Session Act 1988 s 40(1). An interlocutory judgment of the Court of Session may not be appealed to the House unless the Court of Session gives leave to appeal (Court of Session Act 1988 s 40(1)(b)) or unless there is a difference of opinion among the judges pronouncing judgment (*HL Standing Orders (Judicial Business)* (2001) no XI).

6 Judicature (Northern Ireland) Act 1978 ss 41, 42, Sch 1.

7 See the Administration of Justice Act 1969 ss 12-15 (as amended); paras 361, 379 post; and *CIVIL PROCEDURE* vol 12 (2009) PARA 1718. These appeals are popularly known as 'leapfrog appeals' because they bypass the Court of Appeal. As to the High Court see PARA 602 et seq post.

8 See *ibid* s 16(1) (amended by the Judicature (Northern Ireland) Act 1978 s 122(1), Sch 5 Pt II; and by the Matrimonial Causes (Northern Ireland) Order 1978, SI 1978/1045, art 63, Sch 4 para 13), which applies the Administration of Justice Act 1969 ss 12-15 (as amended) to Northern Ireland.

9 *Ie* following the decision of the House in *Lane v Esdaile* [1891] AC 210, HL; see also *R v Secretary of State for Trade and Industry, ex p Eastaway* [2001] 1 All ER 27, [2000] 1 WLR 2222, HL; the Access to Justice Act

1999 s 54(4); and CIVIL PROCEDURE vol 12 (2009) PARA 1659; CPR Pt 52; and CIVIL PROCEDURE vol 12 (2009) PARA 1658 et seq; and the Court of Session Act 1988 s 40(3). No appeal lies to the House from an incidental decision of the Court of Appeal: see the Supreme Court Act 1981 s 58 (substituted by the Access to Justice Act 1999 s 60); para 639 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1711.

10 See an order under the Supreme Court Act 1981 s 42 (as amended): see PARA 608 post; and CIVIL PROCEDURE vol 11 (2009) PARA 258.

11 See *ibid* s 42(4) (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 258.

12 See the County Courts Act 1984 s 82; and CIVIL PROCEDURE vol 12 (2009) PARA 1717.

13 See the Representation of the People Act 1983 s 157(1); and ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 879.

14 See the Administration of Justice Act 1960 s 13 (as amended); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 515; the Judicature (Northern Ireland) Act 1978 s 44.

15 See the Administration of Justice Act 1960 s 13(4); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 515; the Judicature (Northern Ireland) Act 1978 s 44(4).

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

360 Civil appeals generally

TEXT AND NOTES 1, 4--Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force on 1 October 2009: SI 2009/1604).

TEXT AND NOTE 2--Administration of Justice (Appeals) Act 1934 s 1 repealed: 2005 Act Sch 9 para 3, Sch 18 Pt 5 (in force on 1 October 2009: SI 2009/1604). As to jurisdiction see 2005 Act s 40; AND PARA 601A.1.

NOTE 5--An appellant may appeal without leave from the Inner House of the Court of Session to the House of Lords on a question of law: *Wilson v Jaymarke Estates Ltd* [2007] UKHL 29, (2007) Times, 28 June.

NOTE 9--1981 Act s 58(2) amended: 2005 Act Sch 9 para 36(6) (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/A. JURISDICTION/361. Civil appeals direct from the High Court.

361. Civil appeals direct from the High Court.

In certain civil proceedings¹ an appeal may be brought direct to the House of Lords from a decision of the High Court² if the trial judge grants a certificate for this purpose and if leave is granted by the House³.

Before granting the certificate the judge⁴ must be satisfied:

- 15 (1) that a point of law of general public importance is involved in the decision which either:
 - 1 1. (a) relates wholly or mainly to the construction of an enactment or of a statutory instrument and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings; or
 2. (b) is one in respect of which he is bound by a decision of the Court of Appeal or of the House of Lords in previous proceedings⁵ and was fully considered in the judgments given by the Court of Appeal or the House of Lords, as the case may be, in those previous proceedings⁶;
- 2 16 (2) that a sufficient case has been made out to justify an application for leave to bring such an appeal⁷; and
- 17 (3) that all the parties to the proceedings consent to the grant of the certificate⁸.

No appeal lies against the grant or refusal of a certificate⁹.

The judge may grant a certificate only in cases where in the usual way an appeal would lie from his decision to the Court of Appeal and then to the House of Lords and where it would otherwise be a proper case for granting leave to appeal¹⁰. No certificate may be granted where the decision of the judge, or any order made by him in pursuance of the decision, is made in the exercise of jurisdiction to punish for contempt of court¹¹.

Since November 1983 the House of Lords has not granted leave to appeal to such petitions save, for cases involving a point under head (1)(a) above¹², where:

- 18 (i) there is an urgent need to obtain an authoritative interpretation by the House of Lords;
- 19 (ii) the case is one in which leave to appeal to the House of Lords would have been granted if it had not been brought direct to the House and the judgment had been that of the Court of Appeal; and
- 20 (iii) it does not appear likely that any additional assistance could be derived from the judgment of the Court of Appeal¹³.

Similarly, leave has not been granted to petitions involving a point under head (1)(b) above¹⁴ save where:

- 21 (A) the case is not distinguishable from the case which was the subject of the previous decision;
- 22 (B) the previous case was fully considered in previous judgment after argument that appears to have been adequate; and

- 23 (c) the case is one in which leave to appeal to the House of Lords would have been granted if it had not been brought direct to the House and the judgment had been that of the Court of Appeal¹⁵.

1 'Civil proceedings' in the Administration of Justice Act 1969 Pt II (ss 12-16) (as amended) means any proceedings other than proceedings in a criminal cause or matter: s 12(8). As to the distinction between civil and criminal proceedings see PARA 310 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 2.

2 See *ibid* s 12 (as amended), s 13. These appeals are known colloquially as 'leapfrog appeals'. Part II (ss 12-16) (as amended) applies to any civil proceedings in the High Court which are either proceedings before a single High Court judge, or proceedings before a Divisional Court: s 12(2)(a), (c) (s 12(2)(a) amended by the Supreme Court Act 1981 s 152(4), Sch 7). As to the High Court see PARA 602 et seq post; and as to Divisional Courts see PARA 605 post.

3 See the Administration of Justice Act 1969 s 12(1), 13(2). Application for the certificate must be made to the judge immediately after he gives judgment in the proceedings: s 12(4). In any particular case, however, the judge may entertain any such application made at any later time before the end of the period of 14 days beginning with the date on which that judgment is given or such other period as may be prescribed by rules of court: s 12(4) proviso. For the meaning of 'the judge' see note 4 *infra*. As to applications to the House of Lords for leave to appeal under Pt II (ss 12-16) (as amended) see PARA 379 post.

4 'The judge', in relation to proceedings to which *ibid* s 12 (as amended) applies, means the judge referred to in s 12(2)(a) (as amended: see note 2 *supra*) or the Divisional Court referred to in s 12(2)(c), as the case may be: s 12(8) (amended in relation to England and Wales by the Courts Act 1971 s 56(4), Sch 11 Pt IV).

5 As to the doctrine of precedent ('stare decisis') and the binding effect of decisions of the Court of Appeal and of the House of Lords on the High Court see CIVIL PROCEDURE vol 11 (2009) PARA 91et seq.

6 Administration of Justice Act 1969 s 12(1)(a), (3). Section 12(3) may be amended by Order in Council by altering, deleting or substituting one or more new paragraphs for either or both of s 12(3)(a) and (b), or by adding one or more further paragraphs: s 12(6). Any such Order is subject to annulment in pursuance of a resolution of either House of Parliament: s 12(7). At the date at which this title states the law, no such Order had been made.

7 *Ibid* s 12(1)(b).

8 *Ibid* s 12(1)(c).

9 *Ibid* s 12(5).

10 See *ibid* s 15(1), (3). As to routes of appeal and the general requirement for leave see CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq. Where, by virtue of any enactment, apart from the provisions of Pt II (ss 12-16) (as amended), no appeal would, with or without leave of the Court of Appeal or of the House of Lords, lie from any decision of the Court of Appeal on an appeal from the decision of the judge, he may not grant a certificate: s 15(2)(b).

11 *Ibid* s 15(4).

12 *Ie* under *ibid* s 12(3)(a): see head (1)(a) in the text.

13 See *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 6 (as amended June 2002).

14 *Ie* under the Administration of Justice Act 1969 s 12(3)(b): see head (1)(b) in the text.

15 See note 13 *supra*.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the

Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

361 Civil appeals direct from the High Court

TEXT AND NOTES--Administration of Justice Act 1969 ss 12, 13, 15 further amended: Constitutional Reform Act 2005 Sch 9 para 20, Sch 18 Pt 5 (in force on 1 October 2009: SI 2009/1604).

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362. Criminal appeals.

An appeal lies, with leave, to the House of Lords at the instance of the defendant or the prosecutor¹:

- 24 (1) from any decision of the Court of Appeal (Criminal Division) in England and Wales on an appeal to that court²;
- 25 (2) from any decision of the Courts-Martial Appeal Court on an appeal to that court³;
- 26 (3) from any decision of the Court of Appeal in Northern Ireland on an appeal to that court⁴;
- 27 (4) from any decision of the High Court in England and Wales in a criminal cause or matter⁵;
- 28 (5) from any decision of the High Court in Northern Ireland in a criminal cause or matter⁶.

Leave may be granted by the court below or, if refused, by the House of Lords⁷. Leave to appeal in a criminal cause or matter will only be granted if it is certified by the court below that a point of law of general public importance is involved in the decision of that court⁸; and if it appears to that court or to the House that the point is one that ought to be considered by the House⁹. A certificate is not required for an appeal from a decision of the High Court on a criminal application for habeas corpus¹⁰; for an appeal by a minister or other specified person who has been joined as a party to criminal proceedings by a notice given under the Human Rights Act 1998 and who wishes to appeal against any declaration of incompatibility¹¹ made in those proceedings¹²; and in contempt of court cases where the decision of the court below was not a decision on appeal¹³.

No appeal lies to the House of Lords from the High Court of Justiciary in Scotland¹⁴.

1 In relation to proceedings for an offence 'defendant' means the person who was or would have been defendant in those proceedings and 'prosecutor' must be construed accordingly: Administration of Justice Act 1960 s 17(1); Criminal Appeal Act 1968 s 51(1).

2 Criminal Appeal Act 1968 s 33 (amended by the Supreme Court Act 1981 s 152(1), Sch 5; the Criminal Justice Act 1987 s 15, Sch 2, para 3; and the Criminal Procedure and Investigations Act 1996 s 36(1)(a)). As to the Criminal Division of the Court of Appeal see PARA 636 post; and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq.

3 Courts-Martial (Appeals) Act 1968 s 39(1). Appeal lies at the instance either of the accused or of the Defence Council: s 39(1). 'The accused' means the person who was the accused in the proceedings from which the appeal lay to the Appeal Court: s 57(3). As to the Courts-Martial Appeal Court see PARAS 801-804 post. See also ARMED FORCES.

4 Judicature (Northern Ireland) Act 1978 s 41(1)(b); Criminal Appeal (Northern Ireland) Act 1980 s 31(1) (amended by the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988, SI 1988/1846, art 12, Schedule para 5(2)).

5 Administration of Justice Act 1960 s 1(1)(a) (amended by the Access to Justice Act 1999 s 63(1)).

6 Judicature (Northern Ireland) Act 1978 s 41(1)(a).

7 Criminal Appeal Act 1968 s 33(2); Administration of Justice Act 1960 s 1(2); Judicature (Northern Ireland) Act 1978 s 41(2); Criminal Appeal (Northern Ireland) Act 1980 s 31(2); Courts-Martial (Appeals) Act 1968 s 39(2). As to applications to the House of Lords for leave to appeal to the House see PARA 380 post.

8 The Court of Appeal can certify only on a decision made on an appeal to that court as distinct from an application for leave to appeal: *R v Jefferies* [1969] 1 QB 120, [1968] 3 All ER 238, CA. The certificate should state the point of law which is certified: *Jones v DPP* [1962] AC 635 at 639, [1962] 1 All ER 569 at 573, HL, per Lord Reid. The House of Lords has no power to grant a certificate: *Gelberg v Miller* [1961] 1 All ER 618n, [1961] 1 WLR 459, HL.

9 Criminal Appeal Act 1968 s 33(2); Administration of Justice Act 1960 s 1(2); Criminal Appeal (Northern Ireland) Act 1980 s 31(2); Judicature (Northern Ireland) Act 1978 s 41(2); Courts-Martial (Appeals) Act 1968 s 39(2).

10 Administration of Justice Act 1960 s 15(3) (amended by the Access to Justice Act 1999 s 65(2)(a)); Judicature (Northern Ireland) Act 1978 s 45(3).

11 In where a minister of the Crown (or a person nominated by him), a member of the Scottish Executive, a Northern Ireland Minister, or a Northern Ireland department has been joined as a party to any criminal proceedings other than in Scotland by virtue of a notice under the Human Rights Act 1998 s 5(1), (2), and wishes to appeal under s 5(4) against any declaration of incompatibility made in the proceedings: see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

12 See *ibid* s 5(4).

13 Administration of Justice Act 1960 s 13(4); Judicature (Northern Ireland) Act 1978 s 44(4).

14 Criminal Procedure (Scotland) Act 1975 ss 262, 281. This was the case before modern statutory confirmation in 1975, as to which see PARA 360 note 2 ante.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

362 Criminal appeals

TEXT AND NOTES 2, 3, 5, 7, 9--Criminal Appeal Act 1968 s 33, Courts-Martial (Appeals) Act 1968 s 39 and Administration of Justice Act 1960 s 1 further amended: Constitutional Reform Act 2005 Sch 9 paras 13(2), 16(3), 17(3) (in force on 1 October 2009: SI 2009/1604). Courts-Martial (Appeals) Act 1968 s 39 further amended: Armed Forces Act 2006 Sch 8 para 42.

1968 Act s 33 further amended: Serious Crime Act 2007 Sch 8 para 144, Sch 14.

NOTE 12--Human Rights Act 1998 s 5(4) amended: 2005 Act Sch 9 para 66(3) (in force on 1 October 2009: SI 2009/1604).

TEXT AND NOTE 13--1960 Act s 13(4) further amended: 2005 Act Sch 9 para 13(7) (in force on 1 October 2009: SI 2009/1604).

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363. Jurisdiction as to questions of fact.

Except in cases when the findings of fact by the tribunal appealed from are made final by statute, questions of fact are as much open to review by the House of Lords as are questions of law. The House is, however, reluctant to disturb concurrent findings of fact of the courts below, but will revise the findings if it considers them erroneous or if fresh evidence is available¹. Moreover, the House will hesitate to interfere with the findings of the judge who saw and heard the witnesses² unless it is a question not of credibility of the witnesses, but of sufficiency of the evidence³. However, the House will more readily form an independent opinion where the finding of fact is really an inference drawn from facts specifically found by the judge and where there is no question of the credibility of witnesses⁴. A question of fact upon which no evidence was taken below is not arguable before the House⁵.

1 *The P Caland* [1893] AC 207, HL; *Montgomerie & Co Ltd v Wallace-James* [1904] AC 73, HL; *The Glasgow* (1914) 84 LJP 161, HL; *Mendip Range (Owners) v Radcliffe* [1921] 1 AC 556, HL; *Willmot v Anglo-American Oil Co* (1923) 67 Sol Jo 678, HL; *Higgins v J & CM Smith (Whiteinch) Ltd* 1990 SC 82, 1990 SLT 663, HL, per Lord Jauncey of Tullichettle; *Hicks v Chief Constable of South Yorkshire* [1992] 2 All ER 65, HL, per Lord Bridge of Harwich. Where, however, additional evidence, which had not been before the court of first instance, and which tended to show that witnesses on both sides were mistaken as to a material fact, was admitted in the Court of Appeal, and after the hearing in the Court of Appeal the parties agreed that certain other evidence which had been before that court was inaccurate, the House of Lords allowed the whole case to be reopened: *The Olympic* [1915] AC 385, HL.

The House has challenged findings of fact where the specific facts found by a judge of first instance necessarily led to results which were demonstrably impossible, or so improbable that they could not reasonably be accepted: *Islip Pedigree Breeding Centre v Abercromby* 1959 SLT 161, HL. When the time for appeal has expired, the onus on the appellant of satisfying the House that the case is a proper one to reopen on fresh evidence is higher than when he makes the application to admit fresh evidence within the time for bringing an

appeal: *Murphy v Stone Wallwork (Charlton) Ltd* [1969] 2 All ER 949, [1969] 1 WLR 1023, HL. As to the general power of an appellate tribunal in regard to findings of fact see *Caldeira v Gray* [1936] 1 All ER 540, PC.

2 *Strathlorne Steamship Co v Baird & Sons* 1916 SC 134 at 135, HL, per Lord Buckmaster LC; *Clarke v Edinburgh and District Tramways Co* 1919 SC 35, HL; *Powell v Streatham Manor Nursing Home* [1935] AC 243, HL.

3 *Flower v Ebbw Vale Steel, Iron and Coal Co* [1936] AC 206, HL; *Higgins v J & CM Smith (Whiteinch) Ltd* 1990 SC 82, 1990 SLT 663, HL.

4 *Benmax v Austin Motor Co Ltd* [1955] AC 370, [1955] 1 All ER 326, HL; *Whitehouse v Jordan* [1981] 1 All ER 267, [1981] 1 WLR 246, HL.

5 *Bromley v Tryon* reported, but not on this point, [1952] AC 265, [1951] 2 All ER 1058, HL; *Barkway v South Wales Transport Co Ltd* [1950] AC 185, [1950] 1 All ER 392, HL.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/A. JURISDICTION/364. Jurisdiction as to points of law.

364. Jurisdiction as to points of law.

The House of Lords has a duty to determine what ought to be done on an appeal¹. It therefore has a discretion to allow argument on points of law which were abandoned or not raised in the court below, but is averse to doing so unless a refusal would result in injustice². The interpretation put upon an admission made in the courts below can be argued before the House but it has been held that such an admission cannot be withdrawn³.

The House does not entertain appeals against a refusal by the Court of Appeal to grant leave to appeal to that court from a judgment of a lower court⁴. Restrictions are also imposed by statute and by practice⁵. The right of appeal does not abate if the judgment of the court below has been executed, either because no stay was granted or because a stay was granted on terms which were not fulfilled⁶.

In criminal appeals the jurisdiction of the House is not limited to determining the point of law of general public importance set out in the certificate of the court below⁷.

While former decisions of the House are normally binding upon it, the House will depart from one of its own previous decisions when it appears right in the interests of justice and of the proper development of the law to do so⁸. Cases where the House may reconsider its own previous decisions are those involving broad issues of justice or public policy and questions of legal principle. Only in rare cases will the House reconsider questions of construction of statutes or other documents⁹. The House is not bound to follow a previous case merely because it is indistinguishable on the facts¹⁰.

Under its inherent jurisdiction, the House has power to correct any injustice caused by an earlier order of the House¹¹. The House will not reopen any appeal save in circumstances where, through no fault of a party, he has been subjected to an unfair procedure¹².

1 Appellate Jurisdiction Act 1876 s 4. See also *Sutherland v Thompson* [1906] AC 51 at 55, HL, per Lord Halsbury LC. The Appellate Jurisdiction Act 1876 s 4 is applied to appeals direct from the High Court (see PARA 361 ante) by the Administration of Justice Act 1969 s 14(a).

2 It is not possible to cite the principles on which the House exercises this discretion; in practice each case is considered on its merits. For instances of, and observations on, this subject, see *Strath Steamship Co Ltd v Hardy* (1919) 35 TLR 336 at 337, HL, per Lord Buckmaster (argument not allowed on statutory provisions not before the Court of Appeal); *North Staffordshire Rly Co v Edge* [1920] AC 254 at 264, HL, per Lord Birkenhead; *Stonehaven Magistrates v Kincardineshire County Council* 1940 SC 56 at 62, HL, per Lord Thankerton (new point held to be within the scope of the argument); *IRC v Ross and Coulter* [1948] 1 All ER 616, HL (new point held to be not within the special commissioners' stated case); *Practice Note* [1949] WN 484, HL (argument allowed in *Barkway v South Wales Transport Co Ltd* [1950] AC 185, [1950] 1 All ER 392, HL, on point not argued before the Court of Appeal); *Demetriades v Glasgow Corp* [1951] 1 All ER 457 at 462, HL, per Lord Reid (argument not allowed on interlocutor not challenged below); *South of Scotland Electricity Board v British Oxygen Co Ltd* [1956] 3 All ER 199 at 202, [1956] 1 WLR 1069 at 1073, HL, per Lord Normand; *British Railways Board v Liptrot* [1969] 1 AC 136 at 150, [1967] 2 All ER 1072 at 1075, HL (argument not allowed on point not before the Court of Appeal); *P & M Kaye Ltd v Hosier and Dickinson Ltd* [1972] 1 All ER 121 at 124, [1972] 1 WLR 146 at 148, HL, per Lord Reid.

3 *Gdynia Ameryka Line Zeglugowe Spolka Akcyjna v Boguslawski* (1952) reported, but not on this point, [1953] AC 11, [1952] 2 All ER 470, HL.

4 See PARA 360 note 9 ante.

5 Eg where there is no live issue to be decided between the parties: *Sun Life Assurance Co of Canada v Jervis* [1944] AC 111, [1944] 1 All ER 469, HL. See also *Ainsbury v Millington* [1987] 1 All ER 929, [1987] 1 WLR 379n, HL. Where there is an issue involving a public authority as to a question of public law, the House of Lords has a discretion to hear an appeal even where there is no issue between the parties to be decided: *R v Home Secretary, ex p Salem* [1999] 1 AC 450, [1999] 2 All ER 42, HL. See also *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 28 (It is the duty of counsel and solicitors in any pending appeal, if an event occurs which arguably disposes of the dispute between the parties, either to ensure that the appeal is withdrawn by consent or, if there is no agreement to that course, to bring the facts promptly to the attention of the House and to seek directions). See also PARA 374 post.

6 *Baker v Turner* [1950] AC 401 at 413, [1950] 1 All ER 834, HL, per Lord Porter. Presentation of a petition of appeal, or a petition for leave to appeal, does not in itself place a stay of execution on any order appealed from. A party seeking such a stay should apply to the court appealed from, not to the House of Lords: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 43. The House cannot stay an interlocutor of the Court of Session: Court of Session Act 1988 s 41(2).

7 *A-G for Northern Ireland v Gallagher* [1963] AC 349, [1961] 3 All ER 299, HL. As to the requirement for such a certificate in criminal appeals see PARA 362 ante. Where grounds of appeal were argued, but not dealt with by the Court of Appeal, and not referred to by the House of Lords in a subsequent appeal, the matter cannot be re-listed for those grounds to be pronounced upon by the Court of Appeal: *R v Berry (No 2)* [1991] 2 All ER 789, [1991] 1 WLR 125, CA.

8 *Practice Note* [1966] 3 All ER 77, [1966] 1 WLR 1234, HL.

9 *Jones v Secretary of State for Social Services* [1972] AC 944, [1972] 1 All ER 145, HL.

10 *Chancery Lane Safe Deposit and Offices Co Ltd v IRC* [1966] AC 85, [1966] 1 All ER 1, HL.

11 *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119 at 132, [1999] 1 All ER 577 at 585, HL, per Lord Browne-Wilkinson; see also *Cassell & Co Ltd v Broome (No 2)* [1972] AC 1136, [1972] 2 All ER 849n, HL, where the House varied an order for costs already made by the House in circumstances where the parties had not had a fair opportunity to address argument on the point.

12 Where an order has been made by the House in a particular case there can be no question of that decision being varied or rescinded by a later order made in the same case just because it is thought that the first order is wrong: *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119 at 132, [1999] 1 All ER 577 at 585-586, HL, per Lord Browne-Wilkinson. See also *Flower v Lloyd* (1877) 6 ChD 297, CA; and *Kuwait Airways Corp v Iraqi Airways Co (No 2)* [2001] 1 WLR 429 at 433, [2001] 1 Lloyd's Rep 485 at 488 (para 24), HL, per Lord Slynn of Hadley (application to vary the judgment of the House; where a final decision has been made by the House a challenge to the decision on the basis that it has been obtained by fraud must be made by a fresh action alleging and proving the fraud).

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

364 Jurisdiction as to points of law

TEXT AND NOTE 1--Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

NOTE 1--By virtue of the Appellate Jurisdiction Act 1876 s 4, the House of Lords has the same power granted to the Court of Appeal under the Courts and Legal Services Act 1990 s 8(2), to substitute for a sum of damages awarded by a jury such sum as appears to the House to be proper, instead of ordering a new trial: *Grobelaar v News Group Newspapers Ltd* [2002] UKHL 40, [2002] 4 All ER 732, [2002] 1 WLR 3024.

Administration of Justice Act 1969 s 14 repealed: 2005 Act Sch 9 para 20(5), Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

NOTE 5--The responsibility for monitoring and controlling a new and developing area of law in which a large number of cases are likely to come over time lies primarily with the Court of Appeal, and not the House of Lords: *Callery v Gray* [2002] UKHL 28, [2002] All ER (D) 233 (Jun) (recovery of costs relating to after-the-event insurance premiums and fees payable under a conditional fee agreement: see CIVIL PROCEDURE vol 12 (2009) PARA 1830).

COURT/(A) Constitution/365. Constitution of the House of Lords for hearing and determining appeals.

B. THE COURT

(A) CONSTITUTION

365. Constitution of the House of Lords for hearing and determining appeals.

An appeal may not be heard or determined by the House of Lords unless not fewer than three of the following persons, designated 'Lords of Appeal', are present: the Lord Chancellor of Great Britain¹, the Lords of Appeal in Ordinary² and any peer of Parliament who holds, or who has held, any high judicial office³, namely the office of (1) Lord Chancellor of Great Britain; (2) member of the Judicial Committee of the Privy Council⁴; (3) Lord of Appeal in Ordinary; (4) judge of the Supreme Court of England and Wales⁵ or Northern Ireland or of the Court of Session in Scotland⁶. Except for the Lord Chancellor, a lord is not eligible as one of the three Lords of Appeal after his seventy-fifth birthday, except for the purpose of completing proceedings already begun before him⁷.

While the right of lay peers to participate in the judicial business of the House has not been abolished by statute or standing order, it is the longstanding practice of the House that only those lords designated Lords of Appeal participate in judicial business. The last occasion, itself an isolated one, when a lay peer voted on an appeal was in 1883⁸.

1 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the qualifications for appointment to the office of Lord of Appeal in Ordinary see PARA 369 post.

3 Appellate Jurisdiction Act 1876 s 5. The application of s 5 to appeals to the House other than from the Civil Division of the Court of Appeal in England and Wales is provided for by the Criminal Appeal Act 1968 s 35(1); the Administration of Justice Act 1960 s 1(3); the Administration of Justice Act 1969 s 14(b); the Criminal Appeal (Northern Ireland) Act 1980 s 33; the Judicature (Northern Ireland) Act 1978 ss 41(3), 42(3); and the Courts-Martial (Appeals) Act 1968 s 41(1).

4 As to the Judicial Committee see PARA 401 et seq post.

5 As to the judges of the Supreme Court see PARAS 515-521, 602, 619, 637 post.

6 Appellate Jurisdiction Act 1876 s 25 (amended by the Statute Law Revision Act 1894; the Administration of Justice Act 1965 s 34, Sch 2; the Justices of the Peace Act 1968 s 8(2), Sch 5 Pt I; and by the Judicature (Northern Ireland) Act 1978 s 122(1), Sch 5 Pt II); Appellate Jurisdiction Act 1887 s 5.

7 See the Appellate Jurisdiction Act 1876 s 5 proviso (added by the Judicial Pensions and Retirement Act 1993 s 26(1), Sch 6 para 2); the Judicial Pensions and Retirement Act 1993 ss 26(7)(b), 27; and PARA 369 note 10 post.

8 *Bradlaugh v Clarke* (1883) 8 App Cas 354, HL (not reported on this point). Lord Denman, a lay peer, gave his judgment which was in agreement with the dissenting judgment of Lord Blackburn: see the *Times* (1883) 10 April. Lay peers may not claim expenses for attending a judicial sitting: see the resolution of the House of 20 July 1994, 227 Lords Journals 598.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

365 Constitution of the House of Lords for hearing and determining appeals

TEXT AND NOTES 3, 6, 7--Appellate Jurisdiction Act 1876, Criminal Appeal Act 1968 s 35(1), Administration of Justice Act 1960 s 1(3), Administration of Justice Act 1969 s 14, Courts-Martial (Appeals) Act 1968 s 41(1) and Appellate Jurisdiction Act 1887 repealed: Constitutional Reform Act 2005 Sch 9 paras 13(2)(c), 16(5)(a), 17(4), 20(5), Sch 17 paras 9, 11, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

NOTES 3, 6--Appellate Jurisdiction Act 1876 ss 5, 25 amended: Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006, SI 2006/1016.

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(B) ORGANISATION OF JUDICIAL WORK

366. The House.

All judicial proceedings in the House of Lords originate with a petition¹. An appeal originates with a petition of appeal² and most other petitions are petitions for leave to appeal³ or interlocutory⁴. Until 1948 judicial business, including the hearing of appeals, was daily conducted by the House in the Parliament Chamber⁵. In that year, an Appellate Committee was appointed for the first time and since then most petitions have been considered and heard by committees, which meet in the Lords committee rooms⁶. Appeal Committees consider petitions for leave to appeal and most interlocutory matters⁷, while Appellate Committees consider full appeals but may not give judgment⁸. Following report from an Appeal or Appellate Committee, judicial petitions (including interlocutory matters) are determined by the whole House. The agreement of the House is given formally, without proceedings in the Chamber, to reports from the Appeal Committees⁹, save where the vacation of a previous order of the House is at issue¹⁰. A question is always put to the House to dispose of a full appeal¹¹ and whenever the vacation of an earlier order of the House is at issue¹².

1 Appellate Jurisdiction Act 1876 s 4. The sole exception is the reference to the House by the Court of Appeal of a point of law pursuant to the Criminal Justice Act 1972 s 36(3) (following a reference to that Court by the Attorney General of a point of law following acquittal on indictment: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1950), in which case the originating document is an order of the Court of Appeal to that effect.

2 See PARA 382 post.

- 3 See PARA 381 post.
- 4 See PARA 375 post.
- 5 As to the practice see PARA 372 post.
- 6 The change in practice was necessitated by the intrusion of noise into the Chamber from post-war building work on the Palace of Westminster. Soon after the completion of the building work, the House brought forward the hour at which it sat for public business making impractical the return of a full day's judicial business to the Chamber save when the House was not sitting for public business. See the motions and debate on the first establishment of the Appellate Committee: HL Official Report (5th series), 11 May 1948, cols 737-47.
- 7 *HL Standing Orders (Public Business)* (2001) no 86(2)(b). See PARAS 368, 375, 381 post.
- 8 *HL Standing Orders (Public Business)* (2001) no 86(2)(a). See PARAS 367, 386 post.
- 9 The Clerk of the Appeal Committee informs the Clerk of the Parliaments of the report and opinion of the Appeal Committee. The Clerk of the Parliaments arranges for the Minutes of Proceedings of the House to record the report and the agreement of the House thereto. There is no proceeding in the House itself.
- 10 Eg *56th Report from the Appeal Committee* (Session 1998-99), HL Paper 95 (21 July 1999) and the subsequent agreement of the House on the motion of Lord Slynn of Hadley (22 July 1999) (232 Lords Journals 624, 629).
- 11 See PARA 386 post.
- 12 This practice in relation to vacations has applied since August 1993 on the instruction of the then Lord Chancellor (Lord Mackay of Clashfern).

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

366 The House

TEXT AND NOTE 1--Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

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367. Appellate Committees.

Since 1948, the majority of appeals have been referred for hearing to an Appellate Committee¹, sitting in a committee room, which adopt the usual practice of select committees of the House of Lords and that followed by the House when hearing an appeal². The Committee only hears appeals and reports its conclusions to the House: it may not deliver judgment. In each case judgment is given by the House at a judicial sitting³ following debate on and agreement to the report from the Committee⁴.

Two Appellate Committees, of which all Lords of Appeal⁵ are members, are established at the start of each session of Parliament by Standing Order of the House⁶. The chairman of any such Committee is the Lord Chancellor⁷, if present; in his absence the senior Lord of Appeal in Ordinary who is present takes the chair⁸. An Appellate Committee is usually attended by five Lords of Appeal⁹. The responsibility for inviting attendance is that of the Lord Chancellor as ex officio chairman, but this has for many years been delegated to the senior Lord of Appeal in Ordinary¹⁰.

1 Appellate Committees should be distinguished from Appeal Committees, as to which see PARA 368 post.

2 Save that, from the start of Trinity term 1965, Queen's Counsel have not worn full-bottomed wigs when appearing before the Committee.

3 See PARA 372 post.

4 See PARA 386 post.

5 As to the Lords of Appeal see PARA 369 post.

6 *HL Standing Orders (Public Business)* (2001) no 86, made under the Appellate Jurisdiction Act 1876 s 11 (amended by the Statute Law Revision Act 1894).

7 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

8 Seniority for this purpose is determined by reference to the date of first appointment to the office of Lord of Appeal in Ordinary without regard to rank in the peerage: *HL Standing Orders (Public Business)* (2001) no 86(4); but see also PARA 371 post (Commission under letters patent setting out the order in which the Lords of Appeal in Ordinary are to act as Speaker in the absence of the Lord Chancellor or Lord Keeper).

9 The minimum number of Lords of Appeal necessary for hearing an appeal is three: see the Appellate Jurisdiction Act 1876 s 5 (as amended); and PARA 365 ante. Seven lords have been invited to attend on occasion: see eg *Arthur J S Hall & Co (a firm) v Simons, Barratt v Ansell and ors (t/a Woolf Seddon (a firm))*, *Harris v Scholfield Roberts & Hill (a firm) and anor* [2000] 3 All ER 673, [2000] 3 WLR 543, HL.

10 For the role of the Lord Chancellor see the motions on the first establishment of the Appellate Committee: HL Official Report (5th series), 11 May 1948, cols 737-747. For the delegation to the senior Lord of Appeal in Ordinary see 592 HL Official Report (5th series), 30 July 1998, written answers col 220.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

367 Appellate Committees

NOTES 6, 9--Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

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368. Appeal Committees.

Two Appeal Committees¹ are established by Standing Order of the House of Lords² to consider and report to the House on petitions for leave to appeal³ and on petitions incidental to causes depending or formerly depending in the House⁴. All Lords of Appeal⁵ are members of such a Committee, which by custom is attended by three such lords⁶. The Lord Chancellor⁷, if present, is chairman; in his absence the senior Lord of Appeal in Ordinary who is present takes the chair⁸.

1 Appeal Committees should be distinguished from Appellate Committees, as to which see PARA 367 ante.

2 *HL Standing Orders (Public Business)* (2001) no 86.

3 See PARAS 378-381 post.

4 See PARA 375 post.

5 As to the Lords of Appeal in Ordinary see PARA 369 post.

6 See the Appellate Jurisdiction Act 1876 s 5 (as amended); and PARA 365 ante. Section 5 (as amended), which provides that at least three Lords of Appeal must be present for the hearing of an appeal, is applied to the composition of a committee considering petitions for leave to appeal by the Administration of Justice (Appeals) Act 1934 s 1(2); the Criminal Appeal Act 1968 s 35(2); the Administration of Justice Act 1960 s 1(3); the Administration of Justice Act 1969 s 13(4); the Criminal Appeal (Northern Ireland) Act 1980 s 33(2); the Judicature (Northern Ireland) Act 1978 s 41(3); and the Courts-Martial (Appeals) Act 1968 s 41(2).

7 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

8 Seniority for this purpose is determined by reference to the date of first appointment to the office of Lord of Appeal in Ordinary without regard to rank in the peerage: *HL Standing Orders (Public Business)* (2001) no 86(4). See also PARA 367 note 8 ante, para 371 post.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

368 Appeal Committees

NOTE 6--Appellate Jurisdiction Act 1876, Administration of Justice (Appeals) Act 1934 s 1, Criminal Appeal Act 1968 s 35(2), Administration of Justice Act 1960 s 1(3), Administration of Justice Act 1969 s 13(4) and Courts-Martial (Appeals) Act 1968 s 41(2) repealed: Constitutional Reform Act 2005 Sch 9 paras 3, 13(2)(c), 16(5)(a), 17(4), 20(4)(c), Sch 17 para 9, Sch 18 Pt 5 (in force on 1 October 2009: SI 2009/1604). As to jurisdiction see 2005 Act s 40; AND PARA 601A.1.

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(C) MEMBERS AND OFFICERS

369. Lords of Appeal in Ordinary.

The Lords of Appeal in Ordinary are appointed by the Crown by letters patent¹ on the advice of the Prime Minister. Qualification for appointment is either to have held high judicial office² for not less than two years, or to have had right of audience in the Supreme Court for not less than 15 years³. A Lord created as or appointed⁴ to the office of Lord of Appeal in Ordinary is entitled to sit and vote in all business as a member of the House of Lords⁵. The Lords of Appeal in Ordinary have made a statement setting out their practice in relation to participation in public business and interests⁶. In this statement, in deciding who is eligible to sit on an appeal, the Lords of Appeal in Ordinary have agreed to be guided by the same principles as apply to all judges⁷.

The maximum number of Lords of Appeal in Ordinary is 12⁸, two of whom are normally appointed from the Scottish bench and one from Northern Ireland. A Lord of Appeal in Ordinary holds office during good behaviour⁹, subject to a retiring age of 70¹⁰, during which period he receives a salary¹¹. On resigning from his office in Ordinary, the Lord remains a full member of the House during his lifetime¹² and may participate in judicial business until the age of 75¹³.

Lords of Appeal in Ordinary are barred from legal practice¹⁴.

1 See the Appellate Jurisdiction Act 1876 s 6 (amended by the Statute Law Revision Act 1894; the Judges' Remuneration Act 1965 s 5(3), Sch 3; the Administration of Justice Act 1968 s 1(5), Schedule; and the Statute Law (Repeals) Act 1973). The patent confers the rank of baron for life and the entitlement to a writ of summons

to the House of Lords. For the form of patent see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730, art 2, Schedule.

2 For the meaning of 'high judicial office' see the Appellate Jurisdiction Act 1876 s 25 (as amended); and PARA 365 ante.

3 See *ibid* s 6 (amended for this purpose by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 1; and as prospectively amended by the Justice (Northern Ireland) Act 2002). With respect to rights of audience, the relevant qualifications are: (1) in England and Wales, a Supreme Court qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see PARA 575 note 15 post; and LEGAL PROFESSIONS; (2) in Scotland, an advocate or solicitor entitled to appear in the Court of Session and the High Court of Justiciary; and (3) in Northern Ireland a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland: s 6(a)-(c) (as so amended).

4 A person appointed as a Lord of Appeal in Ordinary may be appointed to the office without conferring an additional peerage if already a Lord and member of the House of Lords: see eg HL Minutes of Proceedings, 6 June 2000.

5 Appellate Jurisdiction Act 1876 s 6.

6 614 HL Official Report (5th series), 22 June 2000, cols 419-420. Lords of Appeal in Ordinary are also bound by the code of conduct resolved by the House on 2 and 24 July 2001 in the same way as other members of the House (other than those on leave of absence).

7 These principles were restated by the Court of Appeal in *Locabail (UK) Ltd v Bayfield Properties Ltd and ors* [2000] QB 451, [2000] 1 All ER 65, CA.

8 Administration of Justice Act 1968 s 1(1)(a) (amended by the Maximum Number of Judges Order 1994, SI 1994/3217, art 2). Her Majesty may by Order in Council from time to time amend the Administration of Justice Act 1968 s 1 (as amended) so as to increase or further increase the maximum number of appointments which may be made: s 1(2). No recommendation may be made to Her Majesty in Council to make such an order unless a draft of the Order has been laid before Parliament and approved by resolution of each House: s 1(3). The Appellate Jurisdiction Act 1876 originally provided for two Lords of Appeal in Ordinary. When there are seven or more Lords of Appeal in Ordinary the Lord Chancellor must be satisfied that the state of business requires a vacancy to be filled before Her Majesty can be advised to make a new appointment: Appellate Jurisdiction Act 1947 s 1(1) (amended by the Administration of Justice Act 1968 s 1(5), Schedule). The current number of 12 enables the Lords of Appeal in Ordinary each day to form a panel of five in the House of Lords and a panel of five in the Judicial Committee of the Privy Council (see PARA 401 et seq post), with two Lords able to work on other tasks both connected with these jurisdictions (such as petitions for leave and the drafting of opinions) and extra-judicial (such as other business in the House, participation as non-permanent judges of the court of final appeal in Hong Kong, the conduct of public inquiries and academic commitments). As most Lords of Appeal in Ordinary have extra-judicial commitments, the Lords of Appeal (largely being retired Lords of Appeal in Ordinary under the age of 75) are regularly called upon to sit: see also notes 10, 13 *infra*. A Lord of Appeal in Ordinary who, at the date of his appointment, would have been qualified to be appointed as an ordinary judge of the Court of Appeal or who, at that date, was a judge of that court is an ex-officio judge of the Court of Appeal: see the Supreme Court Act 1981 s 2(2)(c); and PARA 637 post.

9 Appellate Jurisdiction Act 1876 s 6 (as amended: see note 1 *supra*). A Lord of Appeal in Ordinary may only be removed from office on an address of both Houses of Parliament to Her Majesty: s 6.

10 See the Judicial Pensions and Retirement Act 1993 s 26(1), Sch 5, providing that Lords of Appeal in Ordinary are to vacate office on reaching the age of 70 years; and PARA 535 post. No Lord may participate in judicial business after his 75th birthday save to continue dealing with proceedings already begun before him: see ss 26(7)(b), 27; and PARAS 535-536 post. The preceding provisions do not apply to the Lord Chancellor, to whom no age limit applies: s 26(7)(b). Save for the bar on starting proceedings after their 75th birthday, these retirement provisions do not apply to those first appointed to full-time judicial office before 31 March 1995 (the commencement date of the Judicial Pensions and Retirement Act 1993): see s 26(11), Sch 7 para 2. None of these provisions applies to participation in the Committee for Privileges.

11 The salary of a Lord of Appeal in Ordinary is such salary as the Lord Chancellor, with the consent of the Minister for the Civil Service, may determine (Administration of Justice Act 1973 s 9(1)(a)) and is paid from the Consolidated Fund not the House of Lords vote (s 9(5)). The salary is currently set following a recommendation by the non-statutory Senior Salaries Review Body. From 1 April 2002, the Lords of Appeal in Ordinary were awarded Group 2 salaries of £163,376 rising in 1 April 2003 to £170,370. The office of Lord of Appeal in Ordinary is a qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993: see PARA 539 post. Provision is also made under the Judicial Pensions Act 1981 for pensions for Lords of Appeal in Ordinary to whom the Judicial Pensions and Retirement Act 1993 does not apply: see PARA 556 post. As to the

circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 post.

12 Appellate Jurisdiction Act 1876 s 6 (as amended: see note 1 supra).

13 See note 10 supra. When a Lord of Appeal (see PARA 365 ante) participates in the judicial business of the House following his retirement from the office in Ordinary, he receives daily payment from the Lord Chancellor's Department (paid by the Court Service) amounting to 1/220th of the annual salary of a Lord of Appeal in Ordinary (see note 11 supra). There is no statutory basis for this payment.

14 Courts and Legal Services Act 1990 s 75, Sch 11.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

369 Lords of Appeal in Ordinary

TEXT AND NOTES 1-12--Appellate Jurisdiction Act 1876, Appellate Jurisdiction Act 1947, Administration of Justice Act 1968 and Administration of Justice Act 1973 s 9(1)(a) repealed: Constitutional Reform Act 2005 Sch 17 paras 9, 14, 18, 19, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Appellate Jurisdiction Act 1876 s 6 amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 46 (this amendment has effect only until repealing provision is fully commenced: see Sch 10 para 45).

NOTE 1--SI 1992/1730 Schedule amended: SI 2002/3131, SI 2005/617.

NOTE 8--Supreme Court Act 1981 s 2(2)(c) (now Senior Courts Act 1981 s 2(2)(c)) amended: 2005 Act Sch 17 para 22(2) (in force 1 October 2009: SI 2009/1604).

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370. Assistants to the House.

All judges of the Supreme Court of England and Wales, who are not members of the House, are summoned to the House of Lords at the beginning of a Parliament by writ of assistance¹. The

purpose of the writ is to provide assistance and advice to the House in judicial proceedings², but the practice of using judges for this purpose has fallen into disuse. Judges continue to attend the State Opening of Parliament in obedience to their writs³.

The Attorney General and Solicitor General are similarly summoned by writ to attend the House, but they do not assist in judicial proceedings except to be heard on behalf of the Crown at the hearing of appeals⁴.

One or more specialist advisers may attend the hearing of any appeal where the Lord Chancellor⁵ or the Lord Speaker considers the House would benefit from such attendance⁶. The parties may request such attendance⁷.

In any appeal concerning nautical matters in which the attendance of specialist advisers is required, nautical assessors may be appointed of whom one is to be an officer, active or retired, of Her Majesty's Navy, and the other an Elder Brother of the Corporation of Trinity House⁸.

1 As to the judges of the Supreme Court see PARAS 515-521, 602, 619, 637 post. For the form of writ see the *First Report from the Committee for Privileges* (Session 1998-99), HL Paper 106-I, 19. The Crown Office today advises those who receive such writs that their obedience is not expected other than when summoned for a particular occasion. See also PARA 352 ante.

2 *HL Standing Orders (Public Business)* (2001) nos 11, 20. For the procedure when judges attend on appeals see *Allen v Flood* (1897) 129 Lords Journals 174, 209-238.

3 Under *HL Standing Orders (Public Business)* (2001) no 1, the Lord Great Chamberlain commands the attendance for State Opening of the Heads of Division (see PARA 603 post) and such other judges as nominated by the Lord Chief Justice of England and Wales. Where such a judge is also a member of the House he may attend in either capacity. As to the Lord Chief Justice see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 As to the duties and position of the law officers see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529; and 206 HL Official Report (5th series), 9 November 1957, col 377. A law officer may appear as *amicus curiae* (*National Bank of Greece SA v Westminster Bank Executor and Trustee Co (Channel Islands) Ltd* [1970] 3 All ER 656n, [1970] 1 WLR 1400, HL), as may the Official Solicitor (*Gissing v Gissing* [1971] AC 886, [1970] 2 All ER 780, HL) and The Queen's Proctor (*Blyth v Blyth* [1966] AC 643, [1966] 1 All ER 524, HL).

5 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 *HL Standing Orders (Judicial Business)* (2001) no XIV(1). The power was last exercised in 1996 in the cause *Biogen Inc v Medeva plc* [1997] RPC 1, 38 BMLR 149, HL.

7 *HL Standing Orders (Judicial Business)* (2001) no XIV(2).

8 Supreme Court of Judicature Act 1891 s 3; Nautical Assessors (Scotland) Act 1894 s 6; *HL Standing Orders (Judicial Business)* (2001) no XIV(3).

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

370 Assistants to the House

TEXT AND NOTE 8--Supreme Court of Judicature Act 1891 repealed: Constitutional Reform Act 2005 Sch 17 para 13, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

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371. Officers of the House.

The Lord Chancellor¹ is Speaker of the House of Lords ex officio. It is his duty to attend as Speaker, to sit on the Woolsack and to preside over the deliberations of the House². In the Lord Chancellor's absence his place for judicial business is taken by the senior Lord of Appeal in Ordinary present. While there is no statutory office of 'senior Lord of Appeal in Ordinary', the Crown, on the advice of the Prime Minister, regularly issues a Commission under letters patent to appoint Speakers of the House for the purpose of hearing and determining appeals in the absence of the Lord Chancellor or Lord Keeper of the Great Seal³. The Commission sets out the order in which the Lords of Appeal in Ordinary are to act as Speaker in the absence of the Lord Chancellor or Lord Keeper⁴ and particularly names the first and second Lords so to act⁵.

The Clerk of the Parliaments is appointed by the Crown under letters patent⁶. By the terms of his declaration on entering office he is Registrar of the Court of Parliament⁷. The other clerks who assist at the Table of the House are appointed by the Lord Chancellor subject to the approbation of the House⁸. The other clerks are appointed and removed by the Clerk of the Parliaments at his pleasure⁹. The Principal Clerk of the Judicial Office is head of the Judicial Office, which conducts the administrative business connected with the judicial work of the House. The Clerk of the Parliaments also appoints the Taxing Officer who taxes the bills of costs ordered by the House to be paid by parties to appeals¹⁰. Judicial fees¹¹ are administered by the Judicial Office but collected by the Accountant's Office, which administers the House of Lords administration vote¹².

The Gentleman Usher of the Black Rod and Serjeant-at-Arms are appointed by the Crown under letters patent¹³. Black Rod or his deputy, the Yeoman Usher¹⁴, executes orders of the House in connection with the attachment and custody of delinquents in the House of Lords area of the Palace of Westminster¹⁵. The duty of the Serjeant-at-Arms is to attend the Lord Chancellor or Lord acting as Speaker, particularly by carrying the Mace¹⁶. When the Lord Chancellor presides over a judicial sitting of the House, his private secretary usually performs this duty as an assistant Serjeant-at-Arms, if so appointed.

1 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 *HL Standing Orders (Public Business)* (2001) no 17.

3 This is in the same manner as the appointment of deputy Speakers for the other business of the House.

4 The order, after the first and second senior (see note 5 *infra*), is usually by reference to the date of first appointment to the office in Ordinary without regard to rank in the peerage or place on the roll of the Lords.

5 The last such Commission was issued on 6 June 2000 and makes the appointment 'for the purpose of the hearing and determination of Appeals and the matters connected therewith to use occupy and enjoy the room of a Lord Chancellor or Lord Keeper of the Great Seal of Our Realm in Our Upper House of Parliament amongst the Lords Spiritual and Temporal there assembled during the absence of such Lord Chancellor or Lord Keeper from his customary place in Our said Upper House and then and there to do and execute all such things as the said Lord Chancellor or Lord Keeper should or might in that behalf do if he were there personally present'. The Commission is applied to the chairmanship of the Appeal and Appellate Committees: see *HL Standing Orders (Public Business)* (2001) no 86(4). Other than the two lords particularly named, the first of whom is commonly referred to as the 'senior Law Lord' but described by the Parliament Office as 'the senior Lord of Appeal in Ordinary', the order of seniority is by date of first appointment to the office of Lord of Appeal in Ordinary without regard to rank in the peerage.

6 Clerk of the Parliaments Act 1824 s 2 (amended by the Statute Law Revision (No 2) Act 1888). The Clerk may only be removed from office by the Sovereign upon an address from the House for that purpose. See also PARLIAMENT vol 78 (2010) PARA 855.

7 On entering his office the Clerk of the Parliaments makes a declaration to make true entries and records of what is done in Parliament, to keep such things secret and not to disclose them before they are published, except to such as they ought to be disclosed to: see eg 577 HL Official Report (5th series), 13 January 1997, col 9. The declaration remains in its ancient form but was commuted from an oath by the Promissory Oaths Act 1868 s 12(4), (5).

8 Clerk of the Parliaments Act 1824 s 3 (amended by the Statute Law Revision (No 2) Act 1888). These clerks may only be removed from office by order of the House.

9 Clerk of the Parliaments Act 1824 s 5 (amended by the Statute Law Revision Act 1873 and the Statute Law Revision (No 2) Act 1888). This includes the Principal Clerk of the Judicial Office and the other staff in the Judicial Office.

10 *HL Standing Orders (Judicial Business)* (2001) no XII. It is usual for the offices of Principal Clerk of the Judicial Office and Taxing Officer to be held jointly. In the Supreme Court and county courts, taxation of costs is now known as 'assessment' and is undertaken by costs judges: see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq. See also the Community Legal Service (Costs) Regulations 2000, SI 2000/441, reg 10(10)(a); and CIVIL PROCEDURE vol 12 (2009) PARA 1818.

11 Fees are charged on civil judicial business, though waiver is available: *HL Standing Orders (Judicial Business)* (2001) no XIII. The rates are revised quinquennially and are currently set by the *Sixth Report from the House of Lords Offices Committee* (Session 1999-2000), HL Paper 97, agreed to by the House on 27 July 2000.

12 For the roles of these offices see the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2000) PARA 1.63.

13 Since 1 January 1971 these two appointments have been held jointly. See also PARLIAMENT vol 78 (2010) PARA 857; and *Erskine May's Parliamentary Practice* (22nd Edn, 1997) pp 187-188.

14 Also appointed as deputy Serjeant-at-Arms.

15 For the last recorded case of imprisonment by Black Rod see (1870) 102 Lords Journals 77. He exercises his powers of custody over detained defendants who are present at the hearing of criminal appeals. As to the attendance of such persons see PARA 385 note 7 post.

16 The symbol of the authority of the Sovereign, without which the House may not meet.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

371 Officers of the House

NOTE 8--Clerk of the Parliaments Act 1824 s 3 further amended: Constitutional Reform Act 2005 Sch 6 para 1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/B. THE COURT/(D) Sittings/372. In general.

(D) SITTINGS

372. In general.

Appellate business in the House of Lords is subject to the procedure applicable to public business. Sittings of the House for hearing appeals take place when the House is not sitting for public business¹. The House usually sits on alternate Thursdays at two o'clock to give judgment in appeals before public business starts at three o'clock². If a judicial sitting starts the day's business, the Lord Chancellor³ takes his place at the Woolsack, the assistant Serjeant-at-Arms bearing the Mace before him into the Chamber. In the Lord Chancellor's absence a doorkeeper takes the Mace into the Chamber where the presiding Lord of Appeal in Ordinary⁴ waits at the Woolsack, the other lords in their places. All sittings of the House begin with prayers usually read by a bishop. The Clerk at the Table then summons counsel to the Bar and calls on the cause. If counsel are to be heard, the lords, including the lord on the Woolsack, may move to seats and tables close to the Bar from where counsel address the House. At the conclusion of argument judgment is usually reserved. The procedure at judgment is discussed below⁵.

1 Eg during parliamentary recesses. The majority of appeals are heard by an Appellate Committee for the House to determine on report: see PARA 367 ante.

2 The later sitting is a continuation of that started earlier.

3 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 As to the Lords of Appeal in Ordinary see PARA 369 ante.

5 See PARA 386 post.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/B. THE COURT/(D) Sittings/373. Recess, prorogation and dissolution.

373. Recess, prorogation and dissolution.

Judicial business may be carried on when the House is otherwise in recess and usually follows the pattern of judicial terms. The Lord Chancellor¹ or the senior Lord of Appeal in Ordinary² may recall the House for judicial business during a recess, by giving notice to such Lords as he thinks fit³. During a prorogation of Parliament the House of Lords, having made an order to do so during the preceding session, may sit and act for judicial business⁴. Lords of Appeal may be introduced or take the oath at such a sitting⁵. Appellate Committees may meet during prorogation, but Appeal Committees may not⁶. During a dissolution, provision may be made by a writing under The Queen's Sign Manual for the Lords of Appeal to act in the name of the House to hear appeals and to give judgment⁷. No business, including judicial business, may take place between the opening of a new Parliament⁸ and The Queen's speech unless specifically commanded by The Queen⁹. Judicial business is carried on between sessions, Parliaments and the different authorities for sitting, as identified in this paragraph, without interruption.

1 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the senior Lord of Appeal in Ordinary see PARA 371 note 5 ante.

3 *HL Standing Orders (Public Business)* (2001) no 16(3). The House may also be recalled by Proclamation: see PARLIAMENT vol 78 (2010) PARA 1017.

4 Appellate Jurisdiction Act 1876 s 8 (amended by the Statute Law Revision Act 1894). Such an order is not made each session, but is incorporated in *HL Standing Orders (Public Business)* (2001) no 86(5).

5 Appellate Jurisdiction Act 1887 s 1 (amended by the Statute Law Revision Act 1908).

6 *HL Standing Orders (Public Business)* (2001) no 86(5). As to Appellate Committees and Appeal Committees see PARAS 367-368 ante.

7 Appellate Jurisdiction Act 1876 s 9. The Lords of Appeal may act and exercise the jurisdiction of the House as if their sittings were a continuation of the sittings of the House, but they need not sit in the Chamber to do so. If sitting in the Chamber, the Mace is not brought in and prayers are not read, for the authority for the sitting is the writing and only Lords of Appeal are admitted. Appellate and Appeal Committees may be appointed and may meet during dissolution. As to the Lords of Appeal see PARA 365 ante.

8 le for the swearing in of the members of both Houses and the election of a Speaker of the House of Commons.

9 At the opening of the Parliament begun on 13 June 2001, the Lords Commissioners, in addition to commanding oath taking and the election of a Speaker of the House of Commons, for the first time commanded 'And it further appears to Her Majesty to be expedient, with a view to prevent delay in the administration of justice, to provide now for the hearing of appeals depending before Her Majesty in Her Court of Parliament: therefore we do hereby command, in the name of Her Majesty, the Lords of Appeal, as soon as they shall be sworn, to hear and determine such appeals at such times and in such manner as they shall see fit.'

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

373 Recess, prorogation and dissolution

TEXT AND NOTES 4, 5, 7--Appellate Jurisdiction Act 1876 and Appellate Jurisdiction Act 1887 repealed: Constitutional Reform Act 2005 Sch 17 paras 9, 11, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(A) Preliminary and General/374. Regulation of procedure.

C. PROCEDURE

(A) PRELIMINARY AND GENERAL

374. Regulation of procedure.

The House of Lords is enabled by statute to regulate its own practice and procedure in regard to the hearing of appeals¹. The rules of procedure are laid down by:

- 29 (1) statutes²;
- 30 (2) Standing Orders of the House of Lords regulating public business³;
- 31 (3) Standing Orders of the House of Lords regulating judicial business⁴;

- 32 (4) practice directions made from time to time by an Appeal Committee and promulgated by the Clerk of the Parliaments⁵;
- 33 (5) decisions by the Lords of Appeal in Ordinary⁶ as to the conduct of their own business, announced by means of a statement to the House⁷.

A recent development is that the conduct of particularly complex appeals is further regulated by particular instruction from an Appeal Committee, often including a hearing⁸.

1 Appellate Jurisdiction Act 1876 s 11 (amended by the Statute Law Revision Act 1894).

2 While the Appellate Jurisdiction Act 1876 s 11 (as amended: see note 1 supra) gives the House power to regulate its own procedure, statutes, particularly in criminal matters, have limited this: see note 4 infra. Particular instances are noted in paras 378-387 post and in the House of Lords practice directions.

3 Especially relevant are *HL Standing Orders (Public Business)* (2001) no 86, which provides for the establishment of the Appeal and Appellate Committees, and no 16(3), which provides a particular method to recall the House for judicial business. As to Appellate Committees and Appeal Committees see PARAS 367-368 ante.

4 *HL Standing Orders (Judicial Business)* (2001). Several of these Standing Orders predate the Appellate Jurisdiction Act 1876: the earliest was first made in 1661. The revision of Judicial Standing Orders is the only aspect of the judicial work of the House which is still moved at a full sitting of the House for public business (see 617 HL Official Report (5th series), 10 October 2000, col 158) and in which lords other than Lords of Appeal have recently participated. The Standing Orders regulating judicial business are not fully applied to criminal appeals because the right to bring such appeals is established and regulated by statute (the right was established by the Criminal Appeal Act 1907 (repealed) and the first appeal to the House under that Act was heard and determined in 1910: see *R v Ball* [1911] AC 47, (1910) 5 Cr App Rep 238). Parties are instead bound by the provisions of the statute by whose authority they petition the House. The House recommends however that parties should follow the Standing Orders wherever possible: *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) p 32.

5 These practice directions differ for civil and criminal appeals and are published by the House of Lords in two respective versions, the *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals* and the *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals*. Both versions were revised in June 2001 and are available free of charge from the Judicial Office. Directions may be promulgated between editions. New editions and interim directions are sent by the Judicial Office to all agents (or parties) with petitions before the House. The directions (and Standing Orders) are also published on the internet at www.parliament.uk and are reprinted in *The Civil Court Practice* and in *Civil Procedure* vol 2. The civil directions are colloquially referred to as the 'blue book' and the criminal directions as the 'red book'. In this chapter, where there is no difference between the civil and criminal directions, reference is made only to the civil directions. The procedure on criminal appeals is also discussed in *CRIMINAL LAW, EVIDENCE AND PROCEDURE* vol 11(4) (2006 Reissue) PARA 1966 et seq.

6 As to the Lords of Appeal in Ordinary see PARA 369 ante.

7 Two notable examples are the statement made by the Lord Chancellor (Lord Gardiner) on 26 July 1966 on judicial precedent and the statement made by Lord Bingham of Cornhill on 22 June 2000 on the recommendation of the Royal Commission on the Reform of the House of Lords that 'The Lords of Appeal should set out in writing and publish a statement of the principles which they intend to observe when participating in debates and votes in the second chamber and when considering their eligibility to sit on related cases.'

8 Such hearings were, eg, held for *Three Rivers District Council and ors v Bank of England (No 3)* [2001] UKHL 16, [2001] 2 All ER 513 on 27 June 2000 and for *Kuwait Airways Corp v Iraqi Airways Co and ors* [2002] UKHL 19, [2002] All ER (D) 252 (May) on 17 December 2001.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the

Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

374 Regulation of procedure

TEXT AND NOTES 1, 2, 4--Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(A) Preliminary and General/375. Incidental petitions.

375. Incidental petitions.

Where a party to an appeal to the House of Lords wishes to be relieved from complying with the Standing Orders or directions of the House he may apply for such relief by way of petition¹. The petition must be served on the respondent², who may certify on it that he consents to it. Opposed incidental petitions are referred to an Appeal Committee unless the Principal Clerk of the Judicial Office directs otherwise³.

An appeal may be withdrawn before it has been set down for hearing⁴ if the Clerk of the Parliaments has been informed in writing of the nature of the agreement between the parties as to costs⁵. If the appeal has been set down, the appellant must apply by petition if he wishes to withdraw⁶.

An appeal which becomes ineffective owing to the death or bankruptcy of a party will not be dismissed by default if the Clerk of the Parliaments has been informed by notice in writing before the expiration of the time when the appeal would otherwise be dismissed⁷. Such an appeal will, however, be dismissed unless, within three months of the date of the notice to the Clerk of the Parliaments, a petition is lodged⁸ for reviving the appeal⁹.

1 Examples of such petitions are applications for an extension of time in which to lodge documents, to add parties to an appeal, to conjoin or consolidate like appeals, or to restore an appeal dismissed by default. The form of such a petition should follow, so far as applicable, that for a petition for extension of time: see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) Appendix D.

2 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001); see eg directions 13.3 and 25.3.

3 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 39.1. As to Appeal Committees see PARA 368 ante. As to the Principal Clerk see PARA 371 note 9 ante.

4 An appeal is set down for hearing when the statement of facts and issues and the appendix have been lodged: see PARA 383 post; *HL Standing Orders (Judicial Business)* (2001) no VI(1); and *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 14.1.

- 5 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 45.2.
- 6 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 45.3. For a form of petition see Court Forms.
- 7 *HL Standing Orders (Judicial Business)* (2001) no X; *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 24, 27. For a form of notice see Court Forms. An appeal will be dismissed by default if the Standing Orders on security for costs (see PARA 376 post) have not been complied with, or if the statement of facts and issues and the appendix (see PARA 383 post) have not been lodged within the specific time.
- 8 'Lodgment' and 'lodging' mean delivery to a member of the Judicial Office staff, either in person during opening hours or by post (the Judicial Office being the judicial department of the office of the Clerk of the Parliaments). Where the time for lodging a document expires on a Saturday, Sunday, bank holiday, or any other day on which the Judicial Office is closed, it will be received if it is lodged on the first day on which the Office is next open. Communications may be transmitted by facsimile, and the cost of such transmission will be allowed on taxation, only where urgent circumstances make this appropriate. No document which is to be presented to the House or upon which a fee is payable may be so transmitted: see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 37.
- 9 *HL Standing Orders (Judicial Business)* (2001) no X. For a form of petition for revivor see Court Forms.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(A) Preliminary and General/376. Security for costs on appeal.

376. Security for costs on appeal.

In all civil appeals, appellants must give security for costs by payment into the House of Lords Security Fund Account¹ of the appropriate sum² within one week of the presentation of an appeal. Failure to do so will result in the appeal being dismissed³.

If all the respondents agree to security for costs being waived, the appellants may lodge, together with the appropriate fee⁴, a form of consent to a waiver signed by the respondents. Thereafter an order will be made releasing the appellants from the obligation to pay security. Consent must be lodged within one week of the presentation of an appeal⁵.

The following classes of appellant are not required to give security for costs and no waiver is necessary: (1) an appellant who has been granted a certificate of public funding or a legal aid certificate; (2) an appellant in an appeal under the Child Abduction and Custody Act 1985; and (3) a minister or Government department⁶.

The House has the power to modify the requirement to give security for costs but will use this power only in rare circumstances and on report from an Appeal Committee⁷ after an oral hearing⁸.

No security for costs or waiver is necessary in respect of cross-appeals⁹ and no security for costs is required to be lodged for a petition for leave to appeal or for a criminal appeal¹⁰.

1 No interest is payable on security money: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 10.2.

2 Currently £25,000: see *Sixth Report from the House of Lords Offices Committee* (Session 1999-2000), HL 97, agreed to by the House on 27 July 2000. The level of security for costs is revised quinquennially to represent two-thirds of the average taxed costs of an appeal: see 604 HL Official Report (5th series), 26 July 1999, col 1292.

3 *HL Standing Orders (Judicial Business)* (2001) no V(1).

4 Waiver of fees is also available: see *HL Standing Orders (Judicial Business)* (2001) no XIII.

5 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 10.3. A form of consent can be obtained from the Judicial Office. For the meaning of 'lodgment' see PARA 375 note 8 ante.

6 *HL Standing Orders (Judicial Business)* (2001) no V(2); *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 10.4.

7 See the speech of the Lord Chancellor (Lord Irvine of Lairg) at 604 HL Official Report (5th series), 26 July 1999, col 1292.

8 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 10.6.

9 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 10.5.

10 *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 11.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(A) Preliminary and General/377. Public funding and legal aid.

377. Public funding and legal aid.

Public funding is available in connection with proceedings in the House of Lords in the exercise of its jurisdiction in relation to appeals from courts in England and Wales¹. Legal aid is available in respect of such proceedings from the Court of Session in Scotland² and the courts in Northern Ireland³.

The House of Lords does not grant services funded by the Legal Services Commission or legal aid. In civil proceedings, application should be made to the appropriate regional office of the Legal Services Commission, or, in Northern Ireland, to the Legal Aid Committee, or, in Scotland, to the Scottish Legal Aid Board. A party to whom a certificate is issued must immediately lodge the certificate, or a copy of it, in the Judicial Office. An emergency certificate, or subsequent amendments, and the authority for leading counsel, must also be lodged. Where a prospective petitioner or appellant has applied for public funding or legal aid, the Judicial Office must be informed in writing of the date on which the application was made within the original time limit for lodging the petition. The period within which a petition may be lodged will then be extended to one month after the final determination⁴ of the application. If the Judicial Office is not informed of the application, the petition will be out of time as soon as the original time limit has expired. The other parties to the proposed petition must also be informed in writing that an application for public funding or legal aid has been made⁵. Where a respondent to an appeal has applied for public funding or legal aid, the Judicial Office must be informed within the original time limit for lodging the statement of facts and issues and the appendix. The period will then be extended to six weeks after the final determination of the legal aid application⁶.

In criminal proceedings⁷, dependent on the route of appeal, application should be made to the court appealed from or to the appropriate regional office of the Legal Services Commission or, in Northern Ireland, to the Legal Aid Committee. Where a petitioner's application for public funding or legal aid has not been determined within the statutory 14 days for petitioning for leave to appeal⁸, the petition must incorporate an application for an extension of time⁹. The other parties to the proposed petition must also be informed in writing that an application for public funding or legal aid has been made¹⁰.

1 Access to Justice Act 1999 s 6, Sch 2 para 2(1)(a).

2 Legal Aid (Scotland) Act 1986 s 13, Sch 2 para 1.

3 Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, SI 1981/228, art 10, Sch 1 para 1.

4 Where a certificate is granted, the date of final determination is the date of issue of the certificate: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 41.5.

5 *HL Standing Orders (Judicial Business)* (2001) no IX; and *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 41.

6 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 41.4.

7 For general consideration of public funding in criminal cases see LEGAL AID; and in respect of courts-martial appeals see ARMED FORCES.

8 See PARA 380 post.

9 The fact that public funding or legal aid was applied for should be given as a reason for the petition being outside the statutory 14-day period. Such a petition should, if at all possible, be lodged within 14 days of the final determination of the application. See *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 37.3.

10 *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 37.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

377 Public funding and legal aid

TEXT AND NOTE 3--SI 1981/228 Sch 1 para 1 amended: Constitutional Reform Act 2005 Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(B) Applications for Leave to Appeal/378. Appeal from Court of Appeal in civil proceedings.

(B) APPLICATIONS FOR LEAVE TO APPEAL

378. Appeal from Court of Appeal in civil proceedings.

Applications for leave to appeal from the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland in civil proceedings¹ must be made first to that court and, if refused, by petition to the House². The reasoned³ petition must be signed by the petitioner or his agent and must be served on the respondent or his agent⁴. The petition and a copy of the order complained of must be lodged within one month from the date of that order⁵. Petitions for leave to appeal to the House of Lords carry the same title as the cause in the court below, but the parties are described as petitioners and respondents (the singular form is used only for individuals)⁶. Petitions involving minors or anonymity for other reason (which requirement must be drawn to the special attention of the Judicial Office at time of lodgment) are normally given a title of the form *In re X*, where X is the initial letter of the child's surname⁷.

1 See PARA 360 ante.

2 Administration of Justice (Appeals) Act 1934 s 1(1); Judicature (Northern Ireland) Act 1978 s 42(3). Except under certain circumstances leave to appeal from the Court of Session in Scotland is not usually required: see

PARA 360 note 3 ante. For the form of petition see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) Appendices A, B. As to the disposal of petitions by the House see PARA 381 post.

3 A petition for leave to appeal should briefly set out the facts and points of law involved in the appeal. It should conclude with a summary of the reasons why leave to appeal should be granted. An intention to invite the House to depart from one of its own decisions must be clearly stated as a separate reason, as must a challenge relating to the Human Rights Act 1998 or an intention to seek a reference to the Court of Justice of the European Communities ('ECJ'): see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 3.1.

4 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 3.2 and 3.4. For the meaning of 'agent' see PARA 368 note 7 ante.

5 *HL Standing Orders (Judicial Business)* (2001) no II. This period is extended where a party has applied for public funding; see PARA 377 ante. For the meaning of 'lodgment' see PARA 375 note 8 ante.

6 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 3.3. Causes in which trustees, executors, etc are parties are to be titled in the short form, eg *Trustees of John Black's Charity v White*: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 3.3.

7 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 3.3.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

378 Appeal from Court of Appeal in civil proceedings

TEXT AND NOTE 2--Administration of Justice (Appeals) Act 1934 s 1 repealed: Constitutional Reform Act 2005 Sch 9 para 3, Sch 18 Pt 5 (in force on 1 October 2009: SI 2009/1604). As to jurisdiction see 2005 Act s 40; and PARA 601A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(B) Applications for Leave to Appeal/379. Appeal direct from High Court in civil proceedings.

379. Appeal direct from High Court in civil proceedings.

Where the trial judge has granted the necessary certificate¹, any of the parties to the High Court proceedings may petition the House of Lords for leave to appeal direct². The petition,

which must be signed by the petitioner or his agent, must be lodged with the certificate³ within one month from the date on which the certificate was granted or within such extended time as the House may allow in any particular case⁴. The petitioner must give notice in writing to any party to the proceedings in the court below who is not a party to the petition⁵.

Where leave is granted by the House⁶ no appeal from the judge's decision to which the certificate relates lies to the Court of Appeal, but an appeal lies from that decision to the House of Lords⁷.

1 le under the Administration of Justice Act 1969 s 12 (as amended). For the conditions for the granting of the certificate see PARA 361 ante.

2 Ibid s 13(1).

3 The petition should indicate whether the High Court certificate was granted under ibid s 12(3)(a) or s 12(3)(b); see PARA 361 heads (1)(a)-(1)(b) in the text ante. For the meaning of 'lodgment' see PARA 375 note 8 ante.

4 Ibid s 13(1); *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 6.2.

5 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 6.3.

6 As to the disposal of petitions for leave see PARA 381 post; and as to the granting of leave in these cases see PARA 361 ante.

7 Administration of Justice Act 1969 s 13(2). Without prejudice to s 13(2), no appeal lies to the Court of Appeal from the judge's decision to which the certificate relates until the time for making an application to the House has expired and, when such an application has been made, that application has been disposed of: s 13(5).

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

379 Appeal direct from High Court in civil proceedings

TEXT AND NOTES--Administration of Justice Act 1969 s 13(1), (2) amended: Constitutional Reform Act 2005 Sch 9 para 20(4) (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTES 6, 7--Where a party obtains a certificate under the 1969 Act s 12 to apply for leave to appeal on two issues directly to the House of Lords and the House grants permission to appeal in respect of only one of the issues, the party can appeal

to the Court of Appeal on the other issue: *R (on the application of Jones) v Ceredigion CC* [2007] UKHL 24, [2007] 3 All ER 781, [2007] 1 WLR 1400.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(B) Applications for Leave to Appeal/380. Criminal appeals.

380. Criminal appeals.

Application for leave to appeal to the House of Lords must first be made to the court below. Such application must be made within a period of 14 days beginning with the date of the decision of the court below and not the following day. If the court below refuses leave to appeal, application to the House of Lords for leave to appeal must be made within a period of 14 days beginning with the date on which the application for such leave was refused by the court below and not the following day¹. This date is not necessarily that on which the point of law was certified². The application to the House, which is made by petition, must be lodged with a copy of the order complained of and the certificate of the court below that a point of law of general public importance was involved in its decision³. The petition must be signed by the petitioner or his agent and served, together with a copy, on the respondent or his agent⁴. The House of Lords or the court below may, on application made at any time by the defendant but not the prosecutor⁵, extend the time within which application for leave to appeal to the House may be made to the House, or to that court⁶. Such an application to the House should be incorporated in the petition for leave itself, and should set out briefly the reasons why the petition is outside the statutory 14-day period⁷.

1 Criminal Appeal Act 1968 s 34(1); Administration of Justice Act 1960 s 2(1); Criminal Appeal (Northern Ireland) Act 1980 s 32(1); Judicature (Northern Ireland) Act 1978 s 41(5), Sch 1 para 1(1); Courts-Martial (Appeals) Act 1968 s 40(1). This requirement also applies to criminal contempt of court and habeas corpus cases whether a certificate is granted or not. Where the time prescribed expires on a Saturday, Sunday, bank holiday or other day on which the Judicial Office is closed, the application will be accepted if received on the next ensuing day on which the Judicial Office is open: *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 3.2.

2 *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 3.

3 For the provisions relating to this certificate see PARA 362 ante.

4 *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) directions 4.2, 4.5. In habeas corpus matters concerned with extradition, the petition must be served on the government seeking extradition or upon the Director of Public Prosecutions if he is acting for that government. As to the disposal of petitions by the House see PARA 381 post.

5 See the *28th Report from the Appeal Committee: R v Weir* (Session 2000-01), HL Paper 28.

6 Criminal Appeal Act 1968 s 34(2); Administration of Justice Act 1960 s 2(3); Criminal Appeal (Northern Ireland) Act 1980 s 32(2); Judicature (Northern Ireland) Act 1978 Sch 1 para 1(2); Courts-Martial (Appeals) Act 1968 s 40(2).

7 These reasons should not normally exceed a paragraph in length: *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 3.3. For a form of petition see *HL Practice Directions and Standing Orders applicable to Criminal Appeals* Appendix B.

Application for leave to appeal in a case involving a sentence of death (should such a case arise as no statutory offence currently carries the death penalty), and any appeal for which leave is granted on such an application, must be disposed of as quickly as practicable. The time for making an application cannot be extended. While there is currently no statutory offence which carries the death penalty (the last statutory offences from which capital punishment was removed were those of treason and piracy by the Crime and Disorder Act 1998 s 36; and of offences under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 by the

Human Rights Act 1998 s 21(5)), there remains statutory provision for application for leave to appeal in such a case: see the Criminal Appeal Act 1968 s 48, Sch 4 paras 3, 4; the Administration of Justice Act 1960 ss 2(3), 3; the the Judicature (Northern Ireland) Act 1978 Sch 1 para 2; and the Courts-Martial (Appeals) Act 1968 Sch 2 para 7. The sentence must not be executed before the time for appeal is past: Criminal Appeal Act 1968 s 34(3), Sch 4 para 4(2) (the provisions in the Courts-Martial (Appeals) Act 1968 s 40(3), Sch 2 para 7(1) are spent by virtue of the Human Rights Act 1998 s 21(5)). The Human Rights Act 1998 incorporates into domestic law arts 1 and 2 of Protocol 6 to the European Convention on Human Rights. Article 1 abolishes the death penalty but art 2 allows a state to make provision for the death penalty in time of war or of imminent threat of war. On 2 May 2002 the United Kingdom government signed Protocol 13 to the Convention, which bans the death penalty in all circumstances, with a view to ratification and legislation to add Protocol 13 to the Convention rights set out in the Human Rights Act 1998: see HL Official Report (5th series), 30 April 2002, written answers col 86. It may be that the statutory provisions relating to appeals in capital cases will be removed on ratification of Protocol 13.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

380 Criminal appeals

TEXT AND NOTES--References to 14 days or 14-day period are now to 28 days or 28-day period and references to the date are now to the relevant date: Criminal Appeal Act 1968 s 34; Administration of Justice Act 1960 s 2; Courts-Martial (Appeals) Act 1968 s 40 (all amended by the Courts Act 2003 ss 88(2), (5), 91(2); ss 88, 91 amended by Constitutional Reform Act 2005 Sch 9 para 80 (in force 1 October 2009: SI 2009/1604)). 'The relevant date' means the date of the decision of the court below, or if later, the date on which that court gives reasons for its decision: Criminal Appeal Act 1968 s 34(1A); 1960 Act s 2(1A); Courts-Martial (Appeals) Act 1968 s 40(1A) (all added by 2003 Act s 88(3), (6); s 88 amended as from 1 October 2009).

Criminal Appeal Act 1968 s 34, Administration of Justice Act 1960 s 2 and Courts-Martial (Appeals) Act 1968 s 40 further amended: Constitutional Reform Act 2005 Sch 9 paras 13(3), 16(4), 17(3) (in force 1 October 2009: SI 2009/1604).

NOTE 7--Criminal Appeal Act 1968 s 48, Sch 4; Administration of Justice Act 1960 s 2(3) amended, s 3 repealed; Courts-Martial (Appeals) Act 1968 Sch 2 repealed: Courts Act 2003 Sch 8 paras 112, 129-131, Sch 10. Criminal and Disorder Act 1998 s 36 amended: Statute Law (Repeals) Act 2008. Human Rights Act 1998 s 21(5) repealed: Armed Forces Act 2006 Sch 17.

Protocol 13 to the European Convention on Human Rights was ratified on 10 October 2003 and has been incorporated into domestic law: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 104A.1.

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381. Disposal of applications for leave to appeal.

If a petition for leave to appeal is admissible¹, it will be referred by the House to an Appeal Committee² who will consider on the papers³ whether leave to appeal should be given. The Appeal Committee does not give reasons for its decisions. Leave to appeal is granted to petitions which raise an arguable point of law of general public importance which ought to be considered by the House at that time, bearing in mind that the cause will have already been the subject of judicial decision. A petition which, in the opinion of the Appeal Committee, does not raise such a point will be refused for that reason⁴. The grant or refusal of leave to appeal is not to be taken as implying disapproval or approval of the decision of the court below⁵.

If the Appeal Committee is satisfied that leave to appeal should be given, the House may give leave either outright or on terms⁶. If the Committee is minded to recommend the imposition of terms, the parties will be given two weeks to lodge observations on the proposed terms. Any such observations must be served on the other parties⁷. The Appeal Committee may ask the House to invite the respondents to lodge objections to the petition within two weeks, briefly setting out the reasons why the petition should not be allowed or making other submissions as to the terms upon which leave should be granted. Any such objections must be served on the other parties⁸. If, having considered any objections submitted by the respondents, the Appeal Committee is unanimous that leave to appeal should be given or refused, the parties will be notified of that result⁹ and the House invited to make an order granting or refusing leave¹⁰. Where the Appeal Committee is not unanimous, or where further argument is required, the petition will be referred for an oral hearing¹¹. Parties may be heard before the Appeal Committee by counsel¹², by agent¹³, or in person, but only one may be heard on each side. Authorities should not normally be cited before the Appeal Committee¹⁴. The Committee may review conditions on leave to appeal imposed by the court below¹⁵.

A recommendation of a Committee is implemented by order of the House made on report from the Committee¹⁶. In any criminal matter¹⁷ or in any matter concerning extradition an Appeal Committee may take decisions on behalf of the House¹⁸, though this power has not been used.

1 As to inadmissible petitions see PARA 360 ante.

2 See PARA 368 ante.

3 The additional papers required by the House must be lodged within one week of lodgment of the petition. For the papers required in civil petitions see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 4.2; for the papers required in criminal petitions see *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 5.2. For the meaning of 'lodgment' see PARA 375 note 8 ante.

4 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 4.5.

5 *Wilson v Colchester Justices* [1985] AC 750, [1985] 2 All ER 97, HL.

6 See eg *IRC v Wood Bros (Birkenhead) Ltd* [1958] Ch 476, [1958] 1 All ER 405n, HL.

7 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 4.6.

8 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 4.7.

9 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 4.9.

10 See PARA 366 ante.

11 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 4.10. If the respondents have not already been invited to lodge objections, they should do so as soon as possible after having been informed that the petition has been referred for hearing: direction 4.11.

12 Queen's counsel may appear, but only junior counsel's fees are allowed on taxation on any stage of a petition for leave to appeal: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 1.9, 4.14. See also PARA 385 note 4 post.

13 Solicitors conducting appellate proceedings in the House are known as 'agents'.

14 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 4.15.

15 See eg *Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* (1966) 198 Lords Journals 165.

16 See PARA 366 ante.

17 A person who is detained is not entitled to be present at the hearing without authorisation or leave of the House: Administration of Justice Act 1960 s 9(3) (amended by the Criminal Justice Act 1967 s 98(6), Sch 4 para 30); Criminal Appeal Act 1968 s 38 (amended by the Criminal Justice Act 1987 s 15, Sch 2 para 5); Courts-Martial (Appeals) Act 1968 s 44. The attendance of a party to an appeal who is in custody, unless required for the purposes of the hearing, is not permitted. Where the attendance of a party in custody is required, his agents will be informed of that fact in writing: *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 24.2. Under certain circumstances, where a person detained cannot be represented, the Appeal Committee may arrange for the Official Solicitor to act for him: *Practice Direction* [1962] 1 All ER 501, [1962] 1 WLR 270, HL. See eg *Goswami v Customs and Excise Comrs* [1968] 1 WLR 906, HL.

18 *HL Standing Orders (Public Business)* (2001) no 86(3). As to the award of costs on applications for leave to appeal in criminal proceedings see PARA 387 post. The House also has power to authorise an Appeal Committee to take decisions on behalf of the House on petitions for leave to appeal brought directly from the High Court: Administration of Justice Act 1969 s 13(4)(b).

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

381 Disposal of applications for leave to appeal

NOTE 17--Administration of Justice Act 1960 s 9(3) and Criminal Appeal Act 1968 s 38 further amended and Courts-Martial (Appeals) Act 1968 s 44 amended: Constitutional

Reform Act 2005 Sch 9 paras 13(6), 16(7), 17(6) (in force 1 October 2009: SI 2009/1604).

NOTE 18--Administration of Justice Act 1969 s 13(4) repealed: 2005 Act Sch 9 para 20(4) (c), Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

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(C) APPEALS

382. Petition of appeal.

An appeal¹ must be lodged² in the House of Lords within three months of the date of the last order (or, in a Scottish case, interlocutor) appealed from³ unless the House otherwise orders⁴. In cases where leave to appeal is not required by any statutory provision the petition of appeal must be signed by counsel, who must also certify that the appeal is reasonable⁵. In all other cases the petition must be signed by the appellant or his agents⁶. A copy of the petition of appeal must be served on the respondents or their agents, either by delivery in person or by first class post, before lodgment in the Judicial Office. A certificate of such service must be indorsed on the back of the original petition and signed⁷. The appeal is presented on the next sitting day of the House when an order is made requiring the appellant to lodge a statement of facts and issues and an appendix of supporting documents, both of which must be agreed with the respondents⁸. The presentation of an appeal does not entitle a respondent to present a cross-appeal for which leave is required⁹. A petition of cross-appeal must be lodged, with the appropriate fee, within the period allowed for lodging the statement in the original appeal¹⁰. A cross-appeal may be presented out of time¹¹.

Where a party seeks to challenge an act of a public authority under the Human Rights Act 1998¹², the petition of appeal must include the words 'in accordance with the Human Rights Act 1998' at the appropriate place in the prayer of the petition¹³. In any cause where the House is to be asked to consider whether to make, uphold or reverse a declaration that a provision of primary or subordinate legislation is incompatible with a Convention right¹⁴, or to consider any issue which may lead the House to make such a declaration, or where such an issue is or may be raised in respect of a judicial act¹⁵, the appellants must, by letter to the Principal Clerk, draw this to the attention of the Judicial Office at the time of lodgment of the petition¹⁶. The details of the Convention right which it is alleged has been infringed and of the infringement must be set out in the statement of facts and issues¹⁷ and dealt with in a separate paragraph of the cases¹⁸.

1 Under the Appellate Jurisdiction Act 1876 s 4 (see PARAS 359, 364 ante), an appeal is made by way of a petition praying that the order complained of may be reviewed before Her Majesty The Queen in Her Court of Parliament. For the form of the petition see *HL Practice Directions and Standing Orders applicable to Civil/Criminal Appeals* (June 2001 Edns) Appendix C.

2 For the meaning of 'lodgment' see PARA 375 note 8 ante. A copy of the order appealed from must be lodged with the petition: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 9.8.

3 *HL Standing Orders (Judicial Business)* (2001) no I.

4 Eg when leave to appeal has been granted by the House outside the three months' period.

5 *HL Standing Orders (Judicial Business)* (2001) no IV. Leave to appeal is required by statute in all appeals from England, Wales and Northern Ireland: see PARAS 360-362 ante. This standing order applies, therefore, only

to those appeals from Scotland where leave to appeal is not required under a statutory provision: see PARA 360 note 5 ante. An appeal from an interlocutory judgment of the Court of Session requires a further certificate stating either that leave to appeal was granted by that court or that there was a difference of opinion among the judges pronouncing the judgment: *HL Standing Orders (Judicial Business)* (2001) no XI.

6 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 9.2.

7 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 9.7.

8 *HL Standing Orders (Judicial Business)* (2001) no VI; *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 11, 12.

9 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 26.1.

10 le six weeks: see *HL Standing Orders (Judicial Business)* (2001) no VII. For the style of petition see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) Appendix C.

11 See *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 7.2, 26.2.

12 le under the Human Rights Act 1998 ss 6-9: see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

13 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 31.1, Appendix C.

14 As to Convention rights see the Human Rights Act 1998 s 1(3), Sch 1 (which gives further effect in domestic law to much of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969)); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 87; CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to declarations of incompatibility see the Human Rights Act 1998 s 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

15 See *ibid* s 7(1); para 316 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

16 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 9.6. See also the *31st Report from the Appeal Committee: R v A: section 5(2) of the Human Rights Act 1998* (Session 2000-01), HL Paper 44. The purpose of the direction is to enable the Clerk of the Parliaments to give notice to the Crown in accordance with the Human Rights Act 1998 s 5; and so for any person to be joined to the cause in accordance with s 5 well in advance of the lodgment of cases. See also *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 31.

17 See PARA 383 post.

18 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 31.1. See also PARA 384 post.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

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383. Lodgment of statement and appendix.

The appellants must prepare a statement of the facts and issues involved in the appeal. The appellants draw up the statement and submit it to the respondents for discussion. The statement lodged¹ must be a single document agreed between the parties. It must not contain material more appropriately included in a case². Should there be any disagreement over the contents of the statement, disputed material must be included in each party's case³. The statement need not set out or summarise the judgments of the lower courts, nor set out statutory provisions, nor contain an account of the proceedings below. It may be assumed that the statement will be read in conjunction with the documents in the appendix⁴. In any appeal under the Criminal Appeal Act 1968, the statement must clearly state whether any ground of appeal has been undetermined by the Court of Appeal⁵. The statement must be signed by at least one counsel who appeared in the court below, or who is to be briefed for the hearing before the House of Lords⁶.

The appellants must also prepare and lodge an appendix containing documents used in evidence or recording proceedings in the courts below. This should be done in consultation with the respondents; and the contents of the appendix must be agreed between the parties before lodgment in the Judicial Office. The appendix should contain only such documents, or such extracts from documents, as are clearly necessary for the support and understanding of the argument of the appeal⁷. No document which was not used in evidence or does not record proceedings relevant to the action in the courts below may be included⁸. Transcripts of arguments in the courts below must not be included unless any party relies on remarks by a judge or the arguments refer to facts which are admitted by all parties and as to which no evidence was called⁹. The appendix is for the use of all parties. As soon as a proof is available it should be examined against the originals by all parties, if possible at one joint examination¹⁰. An appellant in a Scottish appeal must also lodge a record authenticated by the Court of Session in Part I of the appendix¹¹.

Any document disputed between the parties, and any document which is not included in the appendix but which may be required at the hearing, should be held in readiness and, subject to leave being given, may be introduced at an appropriate moment. The other parties must be given notice of any document which will be held in readiness at the hearing¹².

In civil appeals, the statement and appendix must be lodged by the appellants within six weeks of the presentation of the petition of appeal¹³ unless this period expires during a parliamentary recess, in which case it is automatically extended to the third next sitting day¹⁴. If the statement and appendix are not lodged within the period laid down by standing orders or within such further time as the House may allow, the appeal will be dismissed¹⁵. If the appellants are unable to prepare the statement and appendix within the time specified, they should petition for an extension of that time, indicating the reasons for the request. A petition for extension of time must be signed by the appellants. It must be submitted to those respondents who have entered appearance, for the indorsement of their consent. The petition, together with the appropriate fee, must be lodged before the expiration of the time allowed for lodgment of the statement and appendix. It is expected that respondents will not unreasonably withhold consent to a petition for extension of time. If consent is refused the petition must be indorsed with a certificate that it has been served on the respondents. The petition may then be referred to an Appeal Committee. Up to three extensions of time will ordinarily be granted, provided that they do not prejudice the proper preparation for the hearing or its proposed date.

Subsequent petitions may, at the direction of the Principal Clerk, be referred to an Appeal Committee¹⁶.

In criminal appeals, unless otherwise ordered by the House, the statement and appendix must be lodged by the appellants within six weeks of the presentation of the petition of appeal. This time limit may be extended on reasoned request made within time, at the direction of the Principal Clerk¹⁷.

When lodging the statement and appendix the appellants must apply to set the appeal down for hearing. Once an appeal has been set down for hearing, it may be called on at any time¹⁸. Within seven days of the setting down of the appeal, each party should notify the Judicial Office of the time, in hours, which counsel consider necessary for each address which it is proposed should be made on behalf of that party. In all cases where combined estimates of more than 17 hours (four days) are given, such estimates must be justified (by letter to the Principal Clerk) and are referred to the Lords of Appeal¹⁹.

1 For the meaning of 'lodgment' see PARA 375 note 8 ante; and *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 37.

2 As to cases see PARA 384 post.

3 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 11.1.

4 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 11.2.

5 *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 12.3; and see *R v Mandair* [1995] 1 AC 208 at 218, [1994] 2 All ER 715 at 723, HL, per Lord Mackay of Clashfern LC.

6 *HL Standing Orders (Judicial Business)* (2001) no VI(3); *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 30.8. For the purposes of the Standing Order, 'counsel' includes any solicitor who has obtained a High Court qualification (within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see PARA 515 note 11 post; and LEGAL PROFESSIONS) in respect of civil proceedings. See also PARA 385 note 4 post.

7 For the contents and layout see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 12, 30.

8 See PARA 384 note 5 post.

9 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 12.3.

10 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 12.9.

11 See *HL Standing Orders (Judicial Business)* (2001) no VI(2).

12 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 12.8.

13 See *HL Standing Orders (Judicial Business)* (2001) no VI(1). As to extensions of this time see the text and notes 14-16 infra. As to an extension of this time in a publicly funded or legally aided case see PARA 376 ante; and *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 41.

14 *HL Standing Orders (Judicial Business)* (2001) no VIII. Any day on which the House sits pursuant to a recall under *HL Standing Orders (Public Business)* (2001) no 16 or Proclamation is not a sitting day for the purposes of *HL Standing Orders (Judicial Business)* (2001) no VIII. The wording of Standing Order VIII is such that a meeting of the House pursuant to the Succession to the Crown Act 1707 s 5 (as amended) (see PARLIAMENT vol 78 (2010) PARA 1014) is a sitting day for this purpose.

15 *HL Standing Orders (Judicial Business)* (2001) no VI(1).

16 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 13.2-13.5. See also PARA 375 ante.

17 *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 14.1.

18 The House may suspend its own directions to enable this: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 14.2.

19 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 14.3-4.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(C) Appeals/384. Lodgment of cases.

384. Lodgment of cases.

The appellant and the respondent must each lodge a case, settled by counsel, being a succinct statement of his arguments and of the issues arising in the appeal¹. All the appellants must join in one case, and all the respondents must similarly join unless it can be shown that the interests of one or more of the respondents are distinct from those of the remainder². Parties whose interests in the appeal are passive (for example stakeholders, trustees, executors, etc) are not required to lodge a separate case but should ensure that their position is explained in one of the cases lodged³. The lodgment of a joint case on behalf of both appellants and respondents may be permitted in certain circumstances⁴.

Parties should indicate in their cases whether they intend to abandon any point taken below or to introduce a new point⁵ or to invite the House to depart from one of its own decisions⁶. A respondent who wishes to contend that a decision of the court below should be affirmed on grounds other than those relied on by that court must set out the grounds for that contention in his case⁷. In any appeal under the Criminal Appeal Act 1968 in which grounds of appeal have been undetermined by the Court of Appeal, each party should include in their case submissions on the merits of those grounds and on how they would seek to have them disposed of by the House⁸.

The appellants' case is to be lodged in the Judicial Office and served on the respondents no later than five weeks before the proposed date of the hearing. The respondents' case in response, and that of any other party lodging a case, is to be lodged no later than three weeks before the proposed date of the hearing. Following the exchange of cases, further arguments, by either side, may not be submitted in advance of the hearing without leave⁹.

The lodgment of a case carries the right to be heard by two counsel, one of whom may be leading counsel. Unless otherwise ordered upon application at the hearing, only two counsel's fees are allowed on taxation¹⁰.

1 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15. See *MV Yorke Motors v Edwards* [1982] 1 All ER 1024, [1982] 1 WLR 444, HL, per Lord Diplock. For the meaning of 'lodgment' see PARA 375 note 8 ante.

2 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 15.9-15.10. The consent of all the other parties must be obtained in order to lodge a separate case: see eg *Wiseman v Borneman* (1968) 200 Lords Journals 610. Counsel appearing for a party who has not lodged a case but who desires to be heard must first lodge a case: see eg *United States of America and Republic of France v Dollfus Mieg & Cie SA* [1952] AC 582, [1952] 1 All ER 572, HL; *Rahimtoola v Nizam of Hyderabad* [1958] AC 379, [1958] 3 All ER 441, HL.

3 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15.11.

4 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15.12.

5 If such a point involves the introduction of fresh evidence, application for leave must be made either in the case or by lodging a petition for leave to adduce the fresh evidence: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15.3. For the practice of the House on these points see PARA 364 ante.

6 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15.4. For the practice of the House on this point see PARA 364 ante.

7 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15.4.

8 *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 16.5.

9 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15.13 (which also sets out the procedure when there is a cross-appeal).

10 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 15.8. Junior counsel may appear without a leader: see eg *Essex County Council v Essex Incorporated Congregational Church Union* [1963] AC 808, [1963] 1 All ER 326, HL. Certificate has not been granted by the House for more than three counsel. In the Supreme Court and county courts, taxation of costs is now known as 'assessment' and is undertaken by costs judges: see generally CIVIL PROCEDURE VOL 12 (2009) PARA 1729.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(C) Appeals/385. The hearing.

385. The hearing.

No later than two weeks before the proposed date of the hearing, the appellants must lodge (in addition to the documents earlier lodged) bound volumes containing the petitions, the statement, the cases, part I of the appendix and an index to the authorities¹. Copies of all authorities which may be needed during the hearing must be lodged at the same time as the bound volume². The binding and lodging of the volumes is the duty of the appellants. To enable the appellants to lodge the volumes, the respondents must provide them with further copies of their case and copies of any authorities which they require but which the appellants do not, or arrange with the appellants for their copying³.

The right of audience before the House or an Appellate Committee is restricted to counsel⁴ instructed on behalf of a party or, where the party is a natural person, the party himself⁵. English, Scottish and Northern Ireland counsel have equal audience in any appeal⁶. A party to a criminal appeal who is in custody is not entitled to be present at the hearing without leave of the House⁷.

An appeal may be disposed of in more than one part⁸. A hearing may be adjourned, for example to enable a party to lodge a supplementary case⁹, pending the determination of a reference to the Court of Justice of the European Communities ('ECJ'), or for a person to be joined to the cause in accordance with the provision of the Human Rights Act 1998¹⁰ allowing the Crown to intervene where a court is considering whether to make a declaration of incompatibility¹¹. The House may order an appeal to be re-argued in a case of special difficulty¹² or if one of the lords who was hearing, or had heard, the appeal, died during or after the hearing¹³. At the conclusion of a hearing consideration of the appeal is usually adjourned until a day appointed for judgment¹⁴.

References to the ECJ are made by the House and not by the Appeal¹⁵ or Appellate Committees. When the House intends to make a reference, the hearing of the appeal is adjourned and the parties are invited to submit an agreed draft of the questions to be referred¹⁶. The House then makes the reference, with or without opinions¹⁷. At this stage the appeal may also be disposed of in part¹⁸. Within one month of the judgment of the ECJ, the parties must make written submissions as to the disposal of the appeal or whether a further hearing is necessary. If a further hearing is required, the parties may seek leave to lodge supplemental cases¹⁹. If a further hearing is not required, the appeal may be disposed of with or without opinions.

If, after the conclusion of the argument of an appeal, a party wishes to bring to the notice of the House new circumstances which have arisen and which might affect the decision or order of the House, application must be made forthwith (by letter to the Principal Clerk) for leave to make new submissions. The application should indicate the circumstances and the submissions it is desired to make, and a copy must be sent to the agents for the other parties to the appeal²⁰.

1 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 16.1. For the meaning of 'lodgment' see PARA 375 note 8 ante.

2 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 17.1.

3 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 16.3, 17.1.

4 'Counsel' includes any person who has obtained a High Court qualification in respect of civil proceedings: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 9.2. Under the

Courts and Legal Services Act 1990 ss 27-31 (as amended) every barrister (subject to s 31(3) (as substituted)) and solicitor is deemed to have such a qualification: see further PARA 331 ante; and LEGAL PROFESSIONS.

5 *Tritonia Ltd v Equity and Law Life Assurance Society* [1943] AC 584, [1943] 2 All ER 401, HL. A person under legal disability of minority or mental incapacity brings and conducts proceedings by a litigation friend as in the courts (see CIVIL PROCEDURE vol 11 (2009) PARA 222).

6 Counsel who are members of the House may be briefed: *Re Lord Kinross* [1905] AC 468, HL Committee for Privileges. Australian counsel appeared in *Utilux Pty Ltd v Amp Inc* (1971) 203 Lords Journals 811.

7 See PARA 381 note 17 ante. The attendance of a party to an appeal who is in custody, unless required for the purposes of the hearing, will not be permitted: *HL Practice Directions and Standing Orders applicable to Criminal Appeals* (June 2001) direction 24.2.

8 See eg *Three Rivers District Council and ors v Bank of England (No 3)* [2000] 3 All ER 1, [2000] 2 WLR 1220, HL (18 May 2000) and *Three Rivers District Council and ors v Bank of England (No 3)* [2001] UKHL 16, [2001] 2 All ER 513 (22 March 2001).

9 *British Railways Board v Liptrot* [1969] 1 AC 136 at 143, HL. In *Skegness UDC v Derbyshire Miners' Welfare Committee* [1959] AC 807, [1959] 2 All ER 258, HL, the hearing was adjourned for the views of the Charity Commissioners to be ascertained.

10 In accordance with the Human Rights Act 1998 s 5(2): see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

11 The provision in *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 9.6 is designed to avoid the need for such an adjournment: see PARA 382 note 16 ante.

12 *Jones v Secretary of State for Social Services* [1972] AC 944, [1972] 1 All ER 145, HL, where, during the hearing, it became clear that the House was being invited to depart from one of its own decisions.

13 *Ruabon Steamship Co v London Assurance* [1900] AC 6, HL; *IRC v Blott* [1921] 2 AC 171, HL; but see also PARA 386 note 3 post.

14 On rare occasions the House has, before giving final judgment, remitted the cause to one of the courts below for report on a specified question of fact (see eg *Hain Steamship Co Ltd v Tate and Lyle Ltd* [1936] 2 All ER 597, HL) or for an answer from a medical referee (see eg *Penrikyber Navigation Colliery Co Ltd v Edwards* [1933] AC 28, HL).

15 The Appeal Committee, when considering a petition for leave to appeal, will not consider whether to refer a question to the ECJ, save in the context of considering whether to grant leave to appeal to the House. As to the Appeal Committee see PARA 368 ante.

16 A further statement of facts and issues, for the convenience of the ECJ, may also be appropriate. As to references to the ECJ from the courts see generally CIVIL PROCEDURE vol 12 (2009) PARA 1720 et seq.

17 Opinions are the reasoned speeches of the individual Lords of Appeal on the cause.

18 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 32.2.

19 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 32.3-4.

20 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 38.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(C) Appeals/386. Judgment.

386. Judgment.

Judgment in an appeal is given by the House of Lords¹ on a question put from the Woolsack after the Lords of Appeal have stated the conclusions of their individual written opinions². The lords who have heard the appeal attend for this purpose and speak in order of seniority. The decision of the House is given in accordance with the opinions of the majority on the question being put, for example, 'that the order appealed from be set aside. As many as are of that opinion will say "Content", the contrary "Not Content". The Contents (or Not Contents) have it'³. Thereafter further questions are, where necessary, put from the Woolsack to give consequential orders that may be needed to dispose of the cause⁴.

When the appeal has been heard by an Appellate Committee the questions disposing of the appeal are preceded by the agreement of the House to the report from the Committee⁵.

In disposing of a criminal appeal the House may exercise any powers of the court below or may remit the case to that court⁶.

In urgent appeals, the House or Committee may recall the parties immediately after its post-hearing deliberation. Where the appeal has been heard by the House, it may be disposed of immediately, 'for reasons to be given later'⁷. Where the appeal has been heard by an Appellate Committee, the Committee may announce its intention to make a particular report to the House, to which the House would be invited to agree the following day, again 'for reasons to be given later'. When the written opinions have been prepared they are sent to the parties without further proceedings.

1 For general consideration of a judicial sitting of the House see PARA 372 ante.

2 Since 1963 the opinions have been printed rather than delivered orally in full. They are usually made available to counsel and agents under embargo a few hours before judgment. They are available free of charge to all those who attend judgment and may otherwise be purchased from the Judicial Office, or from the House of Lords Record Office for judgments not delivered in the current session of Parliament: see 253 HL Official Report (5th series), 21 November 1963, col 448. Opinions are also available on the internet at www.parliament.uk. Judgments of the House of Lords delivered since the beginning of 2001 bear the neutral citation [year] UKHL [judgment no].

3 If the opinions are equally divided the order of the court below is allowed to stand: *HL Standing Orders (Public Business)* (2001) no 56(3). See eg *Paquin Ltd v Beauclerk* [1906] AC 148, HL; *Kennedy v Spratt* [1972] AC 83, [1971] 1 All ER 805, HL. When a Lord of Appeal who heard an appeal dies before the date of judgment another lord may adopt as his own the opinion of his deceased colleague: see eg *IRC v Executors of Dr Robert Richards* [1971] 1 All ER 785, [1971] 1 WLR 571, HL. As to the death of a judge see generally para 325 ante.

4 As to the enforcement of judgments see *Nitrate Producers Steamship Co Ltd v Short Bros Ltd* (1922) 127 LT 726, HL; and CIVIL PROCEDURE vol 12 (2009) PARA 1149. As to the approval of a compromise where a minor is a party see *Flack v Withers* [1961] 3 All ER 388n, [1961] 1 WLR 1284, HL.

5 See PARA 367 ante. The report from the Appellate Committee (that it has met and heard counsel and that it would make a particular order to dispose of the appeal) has rarely existed as a public document. The opinions

of the Lords of Appeal remain speeches to the House, not to the Committee, on the merits of the cause. The first reasoned report from the Appellate Committee, produced in a similar manner to the Appeal Committee and other committees of the House, was that on *R v Forbes* [2001] 1 AC 473, [2001] 1 All ER 686, HL (*Fifth Report from the Appellate Committee: R v Forbes* (Session 2000-01), HL Paper 4, 14 December 2000), printed on the same day as its agreement. On that occasion, the individual Lords of Appeal made no speech to the House, save that the Chairman of the Committee moved the agreement of the report and noted that it was unanimous. The device provides a mechanism for the delivery of joint opinions stronger than the delivery by a lord of a short speech to the effect that he agrees with a speech delivered, or to be delivered, by another lord.

6 Criminal Appeal Act 1968 s 35(3); Administration of Justice Act 1960 s 1(4); Judicature (Northern Ireland) Act 1978 s 41(4); Courts-Martial (Appeals) Act 1968 s 41(3). Except under certain circumstances the House may not order a defendant who has already been released to be again detained: Criminal Appeal Act 1968 s 37(5) (amended by the Mental Health (Amendment) Act 1982 s 65(1), Sch 3 para 39); Administration of Justice Act 1960 s 5(5) (amended by the Mental Health (Amendment) Act 1982 Sch 3 para 32); Judicature (Northern Ireland) Act 1978 s 41(5), Sch 1 para 4(4) (amended by the the Mental Health (Northern Ireland) Order 1986, SI 1986/595, art 136(1), Sch 5, Part II); Courts-Martial (Appeals) Act 1968 s 43(5). The House may make orders for the payment of compensation by a person whose conviction has been quashed by the court below but restored by the House: see the Powers of Criminal Courts (Sentencing) Act 2000 ss 130-132; the Courts-Martial (Appeals) Act 1968 s 46(4). Subject to certain conditions concerning bail, a sentence imposed by the House in substitution for another begins to run from the time when the other would have begun to run: Criminal Appeal Act 1968 s 43(2); Administration of Justice Act 1960 s 6(3); Judicature (Northern Ireland) Act 1978 Sch 1 para 5; Courts-Martial (Appeals) Act 1968 s 45(1); see also CRIMINAL LAW, EVIDENCE AND PROCEDURE.

7 See eg *Re Gilligan* and *Re Ellis* (5 October 1999) 232 Lord Journals 675.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

386 Judgment

TEXT AND NOTE 6--Criminal Appeal Act 1968 ss 35(3), 37, 43, Administration of Justice Act 1960 ss 1(4), 5(5) and Courts-Martial (Appeals) Act 1968 s 41(3), 43, 45(1) amended: Constitutional Reform Act 2005 Sch 9 paras 13(2)(d), (5), 16(5)(b), (6), (8), 17(4)(b), (5), (7), (8) (in force 1 October 2009: SI 2009/1604).

NOTE 6--Criminal Appeal Act 1968 s 37(5) and Administration of Justice Act 1960 s 5(5) substituted: Criminal Justice and Immigration Act 2008 Sch 8 paras 13(7), 26(7). For transitory modifications see Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587.

Courts-Martial (Appeals) Act 1968 s 43(5) substituted: Criminal Justice and Immigration Act 2008 Sch 25 para 9(6) (in force 31 October 2009: SI 2009/1028). Courts-Martial (Appeals) Act 1968 s 46 repealed: Armed Forces Act 2006 Sch 8 para 44.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/2. THE HIGH COURT OF PARLIAMENT/(2) APPELLATE JURISDICTION AND PROCEDURE/(ii) The House of Lords/C. PROCEDURE/(C) Appeals/387-400. Costs.

387-400. Costs.

In civil proceedings the jurisdiction of the House of Lords with regard to costs, including costs in the courts below, is inherent in the House and does not depend on any statute¹. In the absence of submissions on questions of costs² the House will normally award costs to the successful party³, but this is not an invariable rule⁴. The bill of costs must be lodged within three months from the date of the final judgment or order of the House⁵. The bill is taxed by the Taxing Officer⁶ if not agreed between the parties⁷. An appeal against the Taxing Officer's taxation lies to the Clerk of the Parliaments and thence to the Appeal Committee. The Clerk of the Parliaments may refer exceptional bills to the Appeal Committee for advice⁸.

When an unsuccessful party is publicly funded or legally-aided the House will make no order unless the other party is unassisted and has applied for his costs to be paid⁹.

In criminal proceedings the jurisdiction of the House with regard to costs is governed by statute. The House may order the payment of the costs of a defendant or of a prosecutor to be paid out of central funds, the costs being those which appear to the House to be reasonably sufficient to compensate the party concerned for any expenses which he properly incurred in the House or in any court below¹⁰. In conducting the taxation of bills in criminal appeals the Taxing Officer will follow the recommendations of the report of the Appeal Committee on the subject¹¹.

The Court of Justice of the European Communities does not make orders for costs. Costs will be covered by the order of the House which disposes of the appeal; and, if necessary, will be taxed by the House of Lords Taxing Officer¹².

1 *West Ham Union Guardians v Churchwardens of St Matthew, Bethnal Green* [1896] AC 477, HL.

2 The bill which must be made at the hearing and again in writing within 14 days of the conclusion of the hearing: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 19.1.

3 Before 1876 it was the practice never to give costs against a respondent: see *A-G v London Corpn* (1850) 2 H & Tw 1 at 31, HL, per Lord Cottenham LC. The practice was changed after the Appellate Jurisdiction Act 1876 came into force.

4 See eg *Cassell & Co Ltd v Broome (No 2)* [1972] AC 1136, [1972] 2 All ER 849, HL, where the successful respondent was awarded only one half of his costs.

5 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 22.1. For the meaning of 'lodgment' see PARA 375 note 8 ante.

6 *HL Standing Orders (Judicial Business)* (2001) no XII. As to the fees on taxation charged by the House see *Sixth Report from the House of Lords Offices Committee* (Session 1999-2000), HL Paper 97. In the Supreme Court and county courts, taxation of costs is now known as 'assessment' and is undertaken by costs judges: see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

7 Where costs will or may be paid from public funds, the amount thereof must be certified: see the Access to Justice Act 1999 s 11; the Community Legal Service (Costs) Regulations 2000, SI 2000/441 (as amended); the Legal Aid (Scotland) Act 1986 s 19; the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, SI 1981/228, art 16; the Prosecution of Offences Act 1985 ss 16(6), 17(1); CIVIL PROCEDURE vol 12 (2009) PARA 1814; and LEGAL AID vol 65 (2008) PARA 109 et seq.

8 Eg *R v Powell and ors* referred to the Appeal Committee 6 April 1998, 231 Lords Journals 729; *Special Report from the Appeal Committee* (Session 1997-98), HL Paper 145, 14 October 1998; 231 Lords Journals 1123.

9 le under the Access to Justice Act 1999 s 11 and the Community Legal Service (Cost Protection) Regulations 2000, SI 2000/824, reg 5(2): see CIVIL PROCEDURE vol 12 (2009) PARA 1814. A submission to that effect should be made and the Legal Services Commission should be informed (the procedure is set out in the Community Legal Service (Costs) Regulations 2000, SI 2000/441, regs 9, 10 (reg 9 amended by SI 2001/822): see CIVIL PROCEDURE vol 12 (2009) PARAS 1814-1815 ante. Under the Access to Justice Act 1999 s 11, the House makes a costs order directly against the funded client and orders that the amount of costs, if any, to be paid by the funded client and to be paid out of the Community Legal Service Fund be certified by the Clerk of the Parliaments. In these circumstances, it is the responsibility of the parties to bring to the attention of the Judicial Office any factor which might affect the making of such an order or certificate: *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 19.2. This direction also applies to unassisted parties who, if successful, would seek an order for costs under the Legal Aid Act 1988 s 18 (repealed subject to transitional provisions); the Legal Aid (Scotland) Act 1986 s 19; or the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, SI 1981/228, art 16: such parties should inform the Scottish Legal Aid Board or the Legal Aid Committee respectively: see *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) directions 19.2, 41.

10 See the Prosecution of Offences Act 1985 Pt II (ss 16-21) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2058 et seq. The amount is certified by the Clerk of the Parliaments on the advice of the Taxing Officer under *HL Standing Orders (Judicial Business)* (2001) no XII.

11 *Special Report from the Appeal Committee: the Clerk of the Parliaments' reference regarding criminal legal aid taxation* (Session 1997-98), HL Paper 145, 14 October 1998; 231 Lords Journals 1123.

12 *HL Practice Directions and Standing Orders applicable to Civil Appeals* (June 2001) direction 32.5.

UPDATE

351-387 The High Court of Parliament

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

359-387 Appellate Jurisdiction and Procedure

As from 1 October 2009 (see SI 2009/1604) the appellate jurisdiction of the House of Lords is abolished and the Supreme Court of the United Kingdom is established: see Constitutional Reform Act 2005 Pt 3 (ss 23-60); and PARA 601 et seq.

387-400 Costs

NOTE 3--Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(1) CONSTITUTION/401. The Judicial Committee.

3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

(1) CONSTITUTION

401. The Judicial Committee.

The constitution of the Judicial Committee of the Privy Council is based on the Judicial Committee Act 1833, under which appeals formerly heard before a committee of the whole Privy Council were to be heard by a committee, styled 'the Judicial Committee of the Privy Council'. Subject to the age limit set out below, its membership consists of the following:

- 34 (1) the President and former Presidents of the Council¹;
 - 35 (2) the Lord Chancellor² and former Lord Chancellors³;
 - 36 (3) the Lords of Appeal in Ordinary⁴;
 - 37 (4) other members of the Privy Council who hold or have held high judicial office⁵;
 - 38 (5) members of the Privy Council who hold or have held any of the following judicial offices overseas:
- 3
- 3. (a) Chief Justice or a justice of the High Court of Australia⁶ or Chief Justice or judge of the Supreme Court of any of the Australian states⁷;
 - 4. (b) Chief Justice or judge of the Supreme Court of New Zealand⁸;
 - 5. (c) Chief Justice or judge of any of the following superior courts specified by Order in Council under the Judicial Committee Amendment Act 1895: the Supreme Court of Trinidad and Tobago⁹, the Supreme Court of Barbados¹⁰, the Supreme Court of the Commonwealth of the Bahamas¹¹, the Eastern Caribbean Supreme Court¹² and the Supreme Court of Jamaica¹³.

4

Two other Privy Counsellors may be appointed to the Judicial Committee by the Sovereign under the sign manual¹⁴. No person may be a member of the Judicial Committee of the Privy Council after the day on which he attains the age of 75 years unless he is the Lord Chancellor¹⁵.

A member of the Judicial Committee may resign his office as a member of the Committee by giving notice of his resignation in writing to the President of the Council¹⁶.

No matter may be heard, nor may any order, report or recommendation be made, by the Judicial Committee in pursuance of any Act of Parliament, unless in the presence of at least three members of the Committee, exclusive of the President of the Council¹⁷.

1 Judicial Committee Act 1833 s 1 (amended by the Statute Law Revision Act 1874; the Statute Law Revision (No 2) Act 1888). Until 1997 the office was usually styled 'Lord President of the Council'.

2 As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Judicial Committee Act 1833 s 1 (as amended: see note 1 supra).

4 See the Appellate Jurisdiction Act 1876 s 6 (as amended); and PARA 369 ante.

5 Appellate Jurisdiction Act 1887 s 3 (amended by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 1(1)). The term 'high judicial office' is defined by the Appellate Jurisdiction Act 1876 s 25 (as amended; applied by the Appellate Jurisdiction Act 1887 s 3) as the office of Lord Chancellor or of judge of the High Court or the Court of Appeal, of the High Court in Northern Ireland or the Court of Appeal in Northern Ireland or of the Court of Session (see PARA 365 ante) and is deemed to include the office of Lord of Appeal in Ordinary and the office of a member of the Privy Council: Appellate Jurisdiction Act 1887 s 5. Persons who hold or have held in England and Wales the office of Lord Justice of Appeal are, if they are Privy Counsellors, members of the Judicial Committee in addition by virtue of the Judicial Committee Act 1881 s 1 (amended by the Judicial Pensions and Retirement Act 1993 Sch 6 para 1(2)).

- 6 Appellate Jurisdiction Act 1908 s 3(1) (amended by the Statute Law (Repeals) Act 1986).
- 7 Judicial Committee (Amendment) Act 1895 s 1(1), Schedule (amended by the Appellate Jurisdiction Act 1913 s 3).
- 8 See note 7 *supra*.
- 9 Judicial Committee (Trinidad and Tobago) Order 1966, SI 1966/1405.
- 10 Judicial Committee (Barbados) Order 1978, SI 1978/620.
- 11 Judicial Committee (Commonwealth of the Bahamas) Order 1986, SI 1986/1161.
- 12 Judicial Committee (Eastern Caribbean Supreme Court) Order 1992, SI 1992/2664.
- 13 Judicial Committee (Jamaica) Order 1992, SI 1992/2665.
- 14 Judicial Committee Act 1833 s 1.
- 15 See the Judicial Pensions and Retirement Act 1993 s 26(7)(a); and PARA 535 *post*. See also Sch 6 para 1, amending the Judicial Committee Act 1881 s 1 and the Appellate Jurisdiction Act 1887 s 3 accordingly; and note 5 *supra*.
- 16 Appellate Jurisdiction Act 1908 s 4.
- 17 Court of Chancery Act 1851 s 16 (amended by the Statute Law Revision Act 1875; and by the Statute Law Revision Act 1892).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

401 The Judicial Committee

TEXT AND NOTES 1, 3, 14--There is to be a committee of the Privy Council styled 'The Judicial Committee of the Privy Council': Judicial Committee Act 1833 s 1(1) (s 1 substituted by Constitutional Reform Act 2005 Sch 16 para 2). A person is a member of the committee if (1) he is a member of the Privy Council who holds, or has held, high judicial office, or (2) another enactment provides for him to be a member of the committee: Judicial Committee Act 1833 s 1(2). In s 1 'high judicial office' has the same meaning as in the Constitutional Reform Act 2005 Pt 3 (ss 23-60): Judicial Committee Act 1833 s 1(4). Head (1) does not apply to a person after the day on which he attains the age of 75 years: s 1(3).

NOTES 5, 15--Judicial Committee Act 1881 repealed: 2005 Act Sch 16 para 9, Sch 18 Pt 6.

TEXT AND NOTE 5--Appellate Jurisdiction Act 1887 and Appellate Jurisdiction Act 1876 repealed: Constitutional Reform Act 2005 Sch 17 paras 9, 11, Sch 18 Pt 5.

1887 Act s 3 and 1876 Act s 25 amended: SI 2006/1016.

TEXT AND NOTE 6--1908 Act s 3 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 7--Omitted: 1895 Act Schedule (amended by Statute Law (Repeals) Act 2004 s 1(1), Sch 1).

TEXT AND NOTE 17--Repealed by Statute Law (Repeals) Act 2004; re-enacted in Judicial Committee Act 1833 s 5A (added by Statute Law (Repeals) Act 2004 Sch 2 para 2).

Court of Chancery Act 1851 s 16 amended: Constitutional Reform Act 2005 Sch 16 para 5, Sch 18 Pt 6.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(1) CONSTITUTION/402. The Registrar of the Privy Council and other officers.

402. The Registrar of the Privy Council and other officers.

The principal officer of the Judicial Committee of the Privy Council is the Registrar of the Privy Council, who is appointed under the sign manual¹. He is disqualified for membership of the House of Commons². His duties are to be defined in his appointment³. He has power to examine witnesses and take affidavits and depositions on oath⁴ and is given specific powers to give directions in matters of practice and procedure and to excuse compliance with certain procedural rules⁵. In the absence of the registrar the President of the Council has power to appoint a deputy⁶.

The Judicial Committee is empowered to appoint such officer or officers as may be necessary to execute processes⁷.

The Judicial Committee Registry is in Downing Street, London.

1 Judicial Committee Act 1833 s 18 (amended by the Statute Law Revision (No 2) Act 1888).

2 House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III.

3 Judicial Committee Act 1833 s 18 (as amended: see note 1 supra).

4 Privy Council Registrar Act 1853 s 1.

5 See PARAS 465, 470 post.

6 Privy Council Registrar Act 1853 s 2.

7 See the Judicial Committee Act 1843 s 15 (amended by the Statute Law Revision Act 1891).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

402 The Registrar of the Privy Council and other officers

TEXT AND NOTES 1, 3--Her Majesty may, under her sign manual, appoint any person to be the registrar of the said privy council, as regards the purposes of the Judicial Committee Act 1833, and direct what duties will be performed by the registrar: s 18(1) (s 18 substituted by Constitutional Reform Act 2005 Sch 16 para 3). A recommendation to Her Majesty to exercise any power under the 1833 Act s 18(1) may be made only after consultation with the President of the Supreme Court of the United Kingdom: s 18(2).

TEXT AND NOTE 6--Privy Council Registrar Act 1853 s 2 amended: Constitutional Reform Act 2005 Sch 16 para 6.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(i) In general/403. Origin of jurisdiction.

(2) JURISDICTION

(i) In general

403. Origin of jurisdiction.

The jurisdiction of the Judicial Committee of the Privy Council arose out of the prerogative right of the Sovereign as the fountain head of all justice to entertain appeals from the courts in her dominions except where the right has been expressly delegated or surrendered¹. The Sovereign exercised this jurisdiction through the council, which acted in an advisory capacity. As Parliament developed its power and influence the High Court of Parliament became the final appellate tribunal for appeals from the United Kingdom but appeals from the overseas territories and from certain other courts still continued to lie to the Sovereign in Council. With the expansion of the British Empire in the eighteenth and nineteenth centuries this became a very substantial jurisdiction. These appeals came to be regulated by the Judicial Committee Act 1833 whereby all appeals were to be heard by a special committee of the Privy Council (the Judicial Committee) which would advise the Crown on the action to be taken².

The jurisdiction of the Judicial Committee was extended by the Judicial Committee Act 1844 to provide that appeals might be brought from any court in any British possession even if that court was not a court of errors or a court of appeal³.

Until 1909 the practice was to make a special order referring all petitions and appeals lodged in the Privy Council Office in November of any year to the Judicial Committee, but as this practice was found to be uncertain and inconvenient it was ordered that all petitions and appeals to the Sovereign in Council were to be referred to the Judicial Committee as if a special order had been made⁴. It is by virtue of this order that petitions and appeals to Her Majesty in Council are now referred to the Judicial Committee.

The extent of the Judicial Committee's jurisdiction has considerably diminished as a result of the constitutional development of the British Commonwealth but the number of appeals being brought to it has not so far been correspondingly affected. This is in part because, where the Queen remains head of state of the country concerned, the right to petition or appeal to the Sovereign in Council does not automatically cease upon the attainment of independence; and although the right of appeal has been terminated by the majority of independent members of the Commonwealth either by specific legislation or on their becoming republics, some, including some republics, have retained it⁵.

The Judicial Committee has in addition been given a number of specific statutory jurisdictions⁶.

1 *Hull & Co v McKenna* [1926] IR 402 at 404, PC; *A-G for Ontario v A-G for Canada* [1947] AC 127 at 145, [1947] 1 All ER 137 at 141, PC; *R v Bertrand* (1867) LR 1 PC 520 at 530; *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115 at 156.

2 See the Judicial Committee Act 1833 s 3 (amended by the Statute Law Revision (No 2) Act 1888).

3 See the Judicial Committee Act 1844 s 1 (amended by the Statute Law (Repeals) Act 1986).

4 See the Order in Council dated 18 October 1909, SR & O 1909/1228.

5 A right of appeal exists:

1 (1) in relation to the following independent Commonwealth countries of which Her Majesty is Sovereign:

1. (a) Antigua and Barbuda (Antigua and Barbuda Constitution Order 1981, SI 1981/1006, Sch 1 s 122; Antigua and Barbuda Appeals to Privy Council Order 1967, SI 1967/224 (modified and retitled by the Antigua and Barbuda Modification of Enactments Order 1981, SI 1981/1105) (dependent for their continued operation on the law of Antigua and Barbuda));

1

2. (b) the Commonwealth of the Bahamas (Bahamas Independence Order 1973, SI 1973/1080, Schedule arts 104(2), 105; Bahamas (Procedure in Appeals to Privy Council) Order 1964, SI 1964/2042 (amended by the Bahamas (Procedure in Appeals to Privy Council) (Amendment) Order 1973, SI 1973/1081));

2

3. (c) Barbados (Barbados Independence Order 1966, SI 1966/1455, s 11, Schedule ss 87, 88; Barbados (Procedure in Appeals to Privy Council) Order 1966, SI 1966/1456);

3

4. (d) Belize (Belize Independence Order 1981, SI 1981/1107, Sch 1 s 104) (dependent for its continuing operation on the law of Belize));

4

5. (e) Grenada (Grenada Constitution Order 1973, SI 1973/2155, Schedule ss 101-106; Grenada Appeals to Privy Council Order 1967, SI 1967/224 (modified and retitled by the Grenada Modification of Enactments Order 1973, SI 1973/2156) (dependent for their continued operation on the law of Grenada, under which the hearing of appeals from Grenada has been resumed after its suspension in 1984: see the Constitutional Judicature (Restoration) Act 1991; the West Indies Associated States Supreme Court (Grenada) Act (Re-enactment) Act 1991; and *Mitchell and ors v A-G of Grenada and anor* [1993] 3 LRC 199, Grenada CA));

5

6. (f) Jamaica (Jamaica (Constitution) Order 1962, SI 1962/1550, Sch 2 s 110 (the Constitution of Jamaica is amended under the law of Jamaica); Jamaica (Procedure in Appeals to Privy Council) Order 1962, SI 1962/1650);

6

7. (g) New Zealand (Order in Council regulating appeals to His Majesty in Council from the Court of Appeal and from the Supreme Court of New Zealand 1910, SR & O 1910/70 (amended by the New Zealand (Appeals to the Privy Council) (Amendment) Order 1972, SI 1972/1194));

7

8. (h) St Christopher and Nevis (St Christopher and Nevis Constitution Order 1983, SI 1983/881, Sch 1 s 99; St Christopher and Nevis Appeals to Privy Council Order 1967, SI 1967/224 (modified and retitled by the St Christopher and Nevis Modification of Enactments Order 1983, SI 1983/882) (dependent for their continued operation on the Law of St Christopher and Nevis));

8

9. (i) St Lucia (St Lucia Constitution Order 1978, SI 1978/1901, Sch 1 s 108; St Lucia Appeals to Privy Council Order 1967, SI 1967/224 (modified and retitled by the St Lucia Modification of Enactments Order 1978, SI 1978/1899) (dependent for their continued operation on the law of St Lucia));

9

10. (j) St Vincent and the Grenadines (St Vincent Constitution Order 1979, SI 1979/916, Sch 1 s 99; St Vincent Appeals to Privy Council Order 1967, SI 1967/224 (modified and retitled by the St Vincent

Modification of Enactments Order 1979, SI 1979/917) (dependent for their continued operation on the law of St Vincent and the Grenadines)); and
10

11. (k) Tuvalu (Tuvalu Independence Order 1978 Schedule s 84 (now spent); Tuvalu (Appeals to Privy Council) Order 1975, SI 1975/1507);
11

- 2 (2) in relation to the following independent Commonwealth countries of which Her Majesty is not Sovereign: Brunei (see PARA 406 post); the Republic of Trinidad and Tobago (see PARA 405 note 4 post); the Commonwealth of Dominica (see PARA 405 note 1 post); Kiribati (see PARA 405 note 2 post); and Mauritius (see PARA 405 note 3 post);
- 3 (3) from United Kingdom Overseas Territories, eg Anguilla (Anguilla Constitution Order 1982, SI 1982/334, Schedule s 72; Anguilla (Appeals to Privy Council) Order 1983, SI 1983/1109); Bermuda (there is no specific United Kingdom legislation covering these appeals); British Antarctic Territory (British Antarctic Territory Court of Appeal (Appeal to Privy Council) Order 1965, SI 1965/592); British Indian Ocean Territory (British Indian Ocean Territory (Appeals to Privy Council) Order 1983, SI 1983/1888); British Virgin Islands (Virgin Islands (Appeals to Privy Council Order) 1967, SI 1967/234 (amended by the Anguilla, Montserrat, and Virgin Islands (Supreme Court) Order 1983, SI 1983/1108, art 3)); Cayman Islands (Cayman Islands (Appeals to Privy Council) Order 1984, SI 1984/1151); Falkland Islands (Falkland Islands (Appeals to Privy Council) Order 1985, SI 1985/445); Gibraltar (Gibraltar Constitution Order 1969 Annex 1 s 62; Gibraltar (Appeals to Privy Council) Order 1985, SI 1985/1199); Montserrat (Montserrat (Appeals to Privy Council) Order 1967, SI 1967/233 (amended by the Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 1983, SI 1983/1108, art 3)); St Helena and dependencies (St Helena Court of Appeal (Appeal to Privy Council) Order 1964, SI 1964/1846 (amended by the St Helena Court of Appeal (Appeal to Privy Council) (Amendment) Order 1990, SI 1990/991)); Turks and Caicos Islands (Turks and Caicos Islands (Appeal to Privy Council) Order 1965, SI 1965/1863 (amended by the Turks and Caicos Islands (Appeal to Privy Council) (Amendment) Order 1973, SI 1973/1084));
- 4 (4) from the sovereign base area in Cyprus (Sovereign Base Areas of Akrotiri and Dhekelia (Appeals to Privy Council) Order in Council 1961, SI 1961/59); and
- 5 (5) from the Channel Islands and Isle of Man (Order in Council regulating Appeals to His Majesty in Council from Jersey (19 May 1671) (SR & O Rev 1948 XI p 341); Order in Council regulating Appeals to His Majesty in Council from Guernsey (13 May 1823) (SR & O Rev 1948 XI p 344); Order in Council regulating Appeals to His Majesty in Council from Jersey and Guernsey (15 July 1835) (SR & O Rev 1948 XI p 347); there is no specific United Kingdom legislation governing appeals from the Isle of Man).

For some examples of the exercise of the jurisdiction under head (1) supra see *Sundry Workers (Represented by the Antigua Workers Union) v Antigua Hotel and Tourist Association* [1993] 1 WLR 1250, PC (Antigua); *Logan v R* [1996] AC 871, [1996] 4 All ER 190, PC (Belize); *Reckley v Minister of Public Safety and Immigration (No 2)* [1996] AC 527, [1996] 1 All ER 562, PC (Bahamas); *Farrington v Minister of Public Safety and Immigration* [1997] AC 395, PC (Bahamas); *Electrotec Services Ltd v Issa Nicholas (Grenada) Ltd* [1997] 3 LRC 480, PC (Grenada); *Fox v R* [2002] 1 LRC 664, PC (St Christopher and Nevis); *Spence v R* [2002] 1 LRC 495, PC (St Vincent and the Grenadines).

6 See eg (1) the Judicial Committee Act 1833 s 4 (as amended); and PARA 415 post; (2) the Naval Prize Act 1864 s 6; and PARAS 410, 490 post; (3) the House of Commons Disqualification Act 1975 s 7; and PARA 414 post; (4) the Ecclesiastical Jurisdiction Measure 1963 ss 1(3)(d), 8(1); the Pastoral Measure 1983 s 9; and PARAS 411, 487 post; (5) the Medical Act 1983 s 40 (as amended); and PARAS 412, 488 post (although this jurisdiction is prospectively removed: see PARA 412 post); and (6) the devolution legislation of 1998 (ie the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998); and PARAS 409, 470 et seq post.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

403 Origin of jurisdiction

TEXT AND NOTES--The Judicial Committee has jurisdiction to grant interim relief in order to ensure that any order which it makes on the eventual hearing of the appeal will not be rendered nugatory: *Belize Alliance of Conservation Non-Governmental Organisations v Department for the Environment* [2003] UKPC 63, [2004] 2 P & CR 13.

NOTE 5--SI 1961/59, SI 1962/1650, SI 1964/1846, SI 1964/2042, SI 1965/592, SI 1965/1863, SI 1967/224, SI 1967/233, SI 1967/234, SI 1973/1081, SI 1973/1084, SI 1975/1507, SI 1983/1109, SI 1983/1888, SI 1984/1151, SI 1985/445, SI 1985/1199 partially revoked: SI 2009/224.

Head (1)(c). SI 1966/1456 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224. Head (3). SI 1964/1846 further amended: SI 2009/224, SI 2009/3204. SI 1985/445 further amended: SI 2009/224, SI 2009/3205.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(ii) Commonwealth Jurisdiction/404. Nature of jurisdiction.

(ii) Commonwealth Jurisdiction

404. Nature of jurisdiction.

Where an appeal is taken to Her Majesty in Council from a court in her dominions, Her Majesty is advised by the Judicial Committee of the Privy Council¹. A decision of the Committee on an appeal takes the form of a report to Her Majesty in which it advises what should be done². Effect is given to the report by means of an Order in Council, which, by constitutional convention, Her Majesty is bound to make.

The Judicial Committee is an appellate court whose handling of appeals is strictly judicial and not discretionary, although its duty is to make a report to Her Majesty³. It is a Commonwealth and not an English court and it is only for convenience that it sits in London⁴. This aspect is reflected in its composition, which is made up of jurists of the highest standing from countries of the Commonwealth⁵.

The decisions of the Committee are binding not only on the courts of the country from which the appeal came but also on the courts of other countries within its jurisdiction where a similar system of law operates⁶.

1 For a summary of the establishment of the Judicial Committee as a court of law see *British Coal Corp v R* [1935] AC 500 at 510-512, PC. The right of appeal now exists from the courts of some only of the independent countries in the Commonwealth: see PARA 403 the text and note 5 ante.

2 Judicial Committee Act 1833 s 3.

3 *British Coal Corp v R* [1935] AC 500 at 510-512, PC; *Ibralebbe v R* [1964] AC 900 at 919-921, [1964] 1 All ER 251 at 258, PC.

4 *Hull & Co v McKenna* [1926] IR 402, PC.

5 See PARA 401 ante.

6 *Fautuma Binti Mohamed Bin Salim Bakhshuwen v Mohaamed Bin Salim Bakhshuwen* [1952] AC 1, PC; and see CIVIL PROCEDURE vol 11 (2009) PARA 103.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(ii) Commonwealth Jurisdiction/405. Modification of jurisdiction; republics.

405. Modification of jurisdiction; republics.

Where an independent Commonwealth country becomes a republic, whether immediately on attaining independence or subsequently, the right of appeal from that country to Her Majesty in Council ceases; but in the case of some republics special arrangements have been made for appeals to lie to the Judicial Committee itself. Such arrangements exist in respect of the Commonwealth of Dominica¹, Kiribati (whence appeals lie only in constitutional cases affecting a Banaban)², Mauritius³ and Trinidad and Tobago⁴. In these cases petitions and appeals are addressed to the Lords of the Judicial Committee and the Committee decides them directly rather than advising the Crown; but otherwise there is no difference from appeals to Her Majesty in Council.

1 See the Commonwealth of Dominica Constitution Order 1978, SI 1978/1027, Sch 1 s 106, Sch 2 para 9; and the Dominica Modification of Enactments Order 1978, SI 1978/1030, art 4 (dependent for their continued operation on the law of Dominica).

2 See the Kiribati Act 1979 s 6 (amended by the Statute Law (Repeals) Act 1986); and the Kiribati Appeals to Judicial Committee Order 1979, SI 1979/720.

3 See the Mauritius Republic Act 1992 s 2; and the Mauritius Appeals to Judicial Committee Order 1992, SI 1992/1716.

4 See the Trinidad and Tobago Republic Act 1976 s 2 (amended by the Statute Law (Repeals) Act 1986); and the Trinidad and Tobago Appeals to Judicial Committee Order 1976, SI 1976/1915.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

405 Modification of jurisdiction; republics

NOTE 2--SI 1979/720 partially revoked: SI 2009/224.

NOTE 4--SI 1976/1915 partially revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(ii) Commonwealth Jurisdiction/406. Modification of jurisdiction; Brunei.

406. Modification of jurisdiction; Brunei.

Until 1990 appeals from Brunei Darussalam lay to Her Majesty in Council. In 1989, however, arrangements were made between the United Kingdom and Brunei governments whereby certain appeals from the Supreme Court of Brunei would continue to be heard by the Judicial Committee of the Privy Council but that the Committee would in future tender its advice to the Sultan instead of Her Majesty¹. The right of appeal in criminal cases was subsequently removed and in civil cases was further restricted to cases in which the parties had, before the hearing on appeal by the Supreme Court, agreed in writing to be bound by an appeal to the Sultan².

1 See the Brunei (Appeals) Act 1989; the Brunei (Appeals) Order 1989, SI 1989/2396.

2 See the Brunei (Appeals) (Amendment) Order 1998, SI 1998/255. The Order makes several exceptions and modifications to the Judicial Committee Act 1833 and the Judicial Committee (General Appellate Jurisdiction) Rules in their application to appeals from Brunei. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 post.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

406 Modification of jurisdiction; Brunei

NOTE 1--SI 1989/2396 partially revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(ii) Commonwealth Jurisdiction/407. Admission of appeals.

407. Admission of appeals.

Appeals to the Judicial Committee fall into three categories: (1) appeals as of right under Orders in Council or other statutory provision¹; (2) appeals by leave granted at the discretion of the court appealed from; and (3) appeals by special leave of the Privy Council². Where an appeal lies as of right application for leave to appeal must first be made to the court overseas from which the appeal is to be brought; and it is the duty of that court to form a judgment as to whether the appeal lies or does not lie under the statutory provisions applicable³. Although the word 'leave' normally implies a discretion to give or withhold permission it does not in this context imply such a discretion⁴; but even where leave to appeal has been wrongly refused by the court appealed from the granting of special leave by the Judicial Committee is a matter of discretion, not a right⁵.

1 See PARA 408 post.

2 See PARAS 418-421 post.

3 *Lady Davis v Lord Shaftesbury* [1932] AC 106, PC.

4 *Lopes v Valliappa Chettiar* [1968] AC 887, [1968] 2 All ER 136, PC, approving the statement in *Chikwakwata v Bosman NO* 1965 (4) SA 57 (S Rhodesia App Div).

5 *Lopes v Valliappa Chettiar* [1968] AC 887 at 894, [1968] 2 All ER 136 at 138, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(ii) Commonwealth Jurisdiction/408. Regulation of conditions of appeal.

408. Regulation of conditions of appeal.

Orders in Council or other statutory provisions lay down conditions regulating the admission of appeals to the Judicial Committee, and are mostly to the following effect.

Appeal lies as of right from any final judgment when the matter in dispute on the appeal amounts to or is of the value of a specified sum, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the like value¹. It sometimes also lies as of right in other specified matters such as final decisions in matrimonial proceedings or on questions as to the interpretation of a constitution².

In addition, appeal usually lies at the discretion of the court below from any other civil judgment, whether final or interlocutory, if in the opinion of the court the question involved in

the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Judicial Committee for decision³. But leave to appeal will normally be granted only upon condition that the appellant within three months, or any shorter period fixed by the court, enters into security to the court's satisfaction in a specified sum for the due prosecution of the appeal and the payment of such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal⁴, or of the appeal being dismissed for non-prosecution⁵, or of the Judicial Committee ordering the appellant to pay the respondent's costs⁶. The court may also impose conditions as to the time within which the appellant must take the necessary steps for the preparation of the record and its dispatch to England⁷. It may suspend execution of the judgment or permit it to proceed on security being given by the person in whose favour the judgment is given to perform what is ordered by the Judicial Committee⁸.

Some constitutions enable the Parliament of the country concerned to provide for appeals to lie to the Judicial Committee in cases other than those already prescribed under the constitution⁹.

Except where a question of interpretation of the constitution is involved, there is in general no right of appeal in criminal cases except by special leave of the Judicial Committee¹⁰.

1 See eg the Constitution of Trinidad and Tobago 1976 s 109(1)(a) which fixes the amount for appeals from that country at 1,500 Trinidad dollars. For some countries the amount has been increased, eg New Zealand, where it was raised from £500 to NZ\$5,000 by the New Zealand (Appeals to the Privy Council) (Amendment) Order 1972, SI 1972/1994.

2 See eg the Constitution of Jamaica s 110(1)(b), (c) (scheduled to the Jamaica (Constitution) Order in Council 1962, SI 1962/1550).

3 See eg the Constitution of Grenada s 104(2)(a) (scheduled to the Grenada Constitution Order 1973, SI 1973/2155).

4 This would include cases in which on appeal the Judicial Committee holds that leave was not properly granted and itself refuses to grant it.

5 See the Judicial Committee (General Appellate Jurisdiction) Rules r 36; and PARA 433 post. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 post.

6 See eg the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962, SI 1962/1650, art 4(a).

7 See eg *ibid* art 4(b).

8 See eg *ibid* art 6.

9 See eg the Constitution of the Commonwealth of the Bahamas art 105(1) (scheduled to the Bahamas Independence Order 1973, SI 1973/1080); and the Constitution of Barbados s 88(1) (scheduled to the Barbados Independence Order 1966, SI 1966/1455).

10 As to criminal cases see further PARA 456 post.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

408 Regulation of conditions of appeal

NOTES 6-8--SI 1962/1650 partially revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(iii) Devolution Jurisdiction/409. Appeals and references in respect of devolution issues.

(iii) Devolution Jurisdiction

409. Appeals and references in respect of devolution issues.

Appeals lie to the Judicial Committee of the Privy Council, and references may be made to it, in respect of 'devolution issues' under the Government of Wales Act 1998, the Scotland Act 1998 and the Northern Ireland Act 1998¹. A devolution issue may come to the Judicial Committee for determination in any of the following ways:

- 39 (1) a direct reference by a Law Officer of a bill or a provision of a bill of the Scottish Parliament or a provision of a bill of the Northern Ireland Assembly, to be heard and determined by the Judicial Committee as a court of first instance²;
- 40 (2) on appeal against a determination of a devolution issue by the High Court or Court of Appeal on a reference of the issue to it by a lower court or tribunal, but the appeal lies only with leave of the court appealed from or, failing such leave, with special leave of the Judicial Committee³;
- 41 (3) the Court of Appeal may refer to the Judicial Committee any devolution issue which arises in proceedings before it, except where the proceedings are themselves on a reference of the issue to the Court of Appeal by a lower court⁴;
- 42 (4) the House of Lords is required to refer to the Judicial Committee any devolution issue arising in judicial proceedings before the House unless it considers that it is more appropriate, having regard to all the circumstances, that it should determine it itself⁵;
- 43 (5) direct references from any court or tribunal, where required⁶;
- 44 (6) with some exceptions under the Government of Wales Act 1998⁷, the authorities who may require direct references to be made under head (5) above may also directly refer to the Judicial Committee devolution issues that are not the subject of proceedings⁸.

The Judicial Committee's decisions in relation to devolution issues must be stated in open court and are binding in all legal proceedings (other than proceedings before the Judicial Committee)⁹. When exercising this jurisdiction the Judicial Committee Board may consist only of members of the Committee who hold or have held office as Lord Chancellor or as Lord of Appeal in Ordinary or high judicial office in the United Kingdom¹⁰. The jurisdiction is that of the Judicial Committee itself, not of Her Majesty in Council, so that the Board's decisions are given directly, not by way of advice to the Crown. Pursuant to power conferred by all three devolution statutes¹¹, the Judicial Committee has been given for the purposes of its devolution jurisdiction the same powers, rights, privileges and authority as 'the appropriate superior court', a term that is defined by reference to the High Court, Court of Session or High Court of Northern Ireland, depending on the origin of the proceedings before it¹². Where additional costs have been incurred by any party to proceedings before it as a result of the intervention of a Law Officer or other authority entitled by the devolution legislation to intervene, the Judicial Committee may award all or part of the additional costs to the person or body intervening¹³.

1 The term 'devolution issue' may be summarised as an issue as to the functions or powers of the devolved executive and legislative authorities established in Wales, Scotland and Northern Ireland respectively by the 1998 legislation. 'Devolution issue' is defined in the Government of Wales Act 1998 s 109, Sch 8 para 1 as: (1) a question whether a function is exercisable by the Welsh Assembly; (2) a question whether a purported or proposed exercise of a function by the Assembly is, or would be, within the powers of the Assembly (including a question whether a purported or proposed exercise of a function by the Assembly is, or would be, outside its powers by virtue of s 106(7) or s 107(1) (which provide that it may not act in conflict with European Community law or with any Convention rights within the meaning of the Human Rights Act 1998)); (3) a question whether the Assembly has failed to comply with a duty imposed on it (including a question whether the Assembly has failed to comply with any obligation which is an obligation of the Assembly by virtue of s 106(1) or (6) (ie a Community law obligation); or (4) a question whether a failure to act by the Assembly is incompatible with any of the Convention rights. It is defined in the Scotland Act 1998 s 98, Sch 6 para 1 as: (a) a question whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is within the legislative competence of the Parliament; (b) a question whether any function (being a function which any person has purported, or is proposing, to exercise) is a function of the Scottish Ministers, the First Minister or the Lord Advocate; (c) a question whether the purported or proposed exercise of a function by a member of the Scottish Executive is, or would be, within devolved competence; (d) a question whether a purported or proposed exercise of a function by a member of the Scottish Executive is, or would be, incompatible with any of the Convention rights or with Community law; (e) a question whether a failure to act by a member of the Scottish Executive is incompatible with any of the Convention rights or with Community law; or (f) any other question about whether a function is exercisable within devolved competence or in or as regards Scotland and any other question arising by virtue of the Scotland Act 1998 about reserved matters. Finally, it is defined in the Northern Ireland Act 1998 s 79, Sch 10 para 1 as: (i) a question whether any provision of an Act of the Northern Ireland Assembly is within the legislative competence of the Assembly; (ii) a question whether a purported or proposed exercise of a function by a minister or Northern Ireland department is, or would be, invalid by reason of s 24 (which prohibits a minister or department from acting in a way which is incompatible with European Community law or with convention rights); (iii) a question whether a Minister or Northern Ireland department has failed to comply with any of the Convention rights, any obligation under Community law or any order under s 27 (quotas for the purposes of international etc obligations) so far as relating to such an obligation; or (iv) any question arising under that Act about excepted or reserved matters.

A devolution issue is not to be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious: Government of Wales Act 1998 Sch 8 para 2; Scotland Act 1998 Sch 6 para 2; Northern Ireland Act 1998 Sch 10 para 2.

The Judicial Committee's jurisdiction is not that of a constitutional court, but is limited to devolution issues: *Hoekstra v HM Advocate* [2001] 1 AC 216 at 221, [2000] 3 WLR 1817 at 1822, PC.

2 See the Scotland Act 1998 s 33, under which the Law Officers who may refer the matter are the Advocate General for Scotland, the Lord Advocate and the Attorney General; the Northern Ireland Act 1998 s 11, under which the Attorney General for Northern Ireland may refer the matter to the Judicial Committee.

3 Government of Wales Act 1998 Sch 8 para 11; Scotland Act 1998 Sch 6 para 23; Northern Ireland Act 1998 Sch 10 para 20. Even where a devolution issue has been raised, the Judicial Committee will not have jurisdiction under these provisions unless there has been a determination of the issue by the court below: *Follen v HM Advocate* [2001] UKPC D2, [2001] All ER (D) 128 (Mar), [2001] 1 WLR 1668 (a decision on the Scotland Act 1998 Sch 6 para 13 (special leave to appeal) also applicable to appeals and applications under Sch 6 para 23).

4 Government of Wales Act 1998 Sch 8 para 10; Scotland Act 1998 Sch 6 para 22; Northern Ireland Act 1998 Sch 10 para 19.

5 Government of Wales Act 1998 Sch 8 para 29; Scotland Act 1998 Sch 6 para 32; Northern Ireland Act 1998 Sch 10 para 32.

6 Such references may be required as follows: (1) where the devolution issue arises under the Government of Wales Act 1998, by the Attorney General in relation to proceedings to which he is a party in England and Wales, by the Advocate General for Scotland in relation to proceedings to which he is a party in Scotland, by the Attorney General for Northern Ireland in relation to proceedings to which he is a party in Northern Ireland, or by the Welsh Assembly in relation to any proceedings to which it is a party (Sch 8 para 30); (2) where the issue arises under the Scotland Act 1998, by the Lord Advocate, the Advocate General for Scotland or the Attorney General for Northern Ireland in any proceedings to which he is a party (Sch 6 para 33); and (3) where the issue arises under the Northern Ireland Act 1998, by the Attorney General, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister acting jointly or the Advocate General for Scotland, in any proceedings to which he is or they are a party (Sch 10 para 33). The First Minister and deputy First Minister may determine that a specified minister or Northern Ireland Department is to exercise this function on their behalf: Northern Ireland Act 1998 Sch 10 para 36.

7 Under the Government of Wales Act 1998 Sch 8 para 31, only the Attorney General or the Assembly may refer issues that are not the subject of proceedings.

8 Ibid Sch 8 para 31; Scotland Act 1998 Sch 6 para 34; Northern Ireland Act 1998 Sch 10 para 34. For the relevant authorities see note 6 supra.

9 Government of Wales Act 1998 Sch 8 para 32; Scotland Act 1998 s 103(1); Northern Ireland Act 1998 s 82(1).

10 Government of Wales Act 1998 Sch 8 para 33; Scotland Act 1998 s 103(2); Northern Ireland Act 1998 s 82(2). The term 'high judicial office' is used in these provisions with reference to the Appellate Jurisdiction Act 1876 s 25 (as amended), where it is defined to mean the office of Lord Chancellor or judge of one of the superior courts of Great Britain and Northern Ireland: see PARA 365 ante. The Appellate Jurisdiction Act 1887 s 5 (see PARA 401 note 5 ante) is to be ignored for these purposes: Government of Wales Act 1998 Sch 8 para 33; Scotland Act 1998 s 103(2); Northern Ireland Act 1998 s 82(2).

11 le pursuant to the Government of Wales Act 1998 Sch 8 para 34; the Scotland Act 1998 s 103(3); and the Northern Ireland Act 1998 s 82(3).

12 See the Judicial Committee (Powers in Devolution Cases) Order 1999, SI 1999/1320, art 4. Where the devolution proceedings consist of an appeal or a reference from a court (see PARA 475 post) the Judicial Committee may (in addition to the powers conferred by art 4) exercise any powers of the court from which the appeal or reference came if that court is not the appropriate superior court and may remit the case to that court with such directions as the Committee may think fit: art 5. 'Court' includes a tribunal: art 2(1). The Judicial Committee may refer any matter to the Registrar of the Privy Council for inquiry and report, and for this purpose the registrar may exercise the powers of the Committee in relation to the attendance and examination of witnesses and the production and inspection of documents: art 6. Nothing in the Judicial Committee (Powers in Devolution Cases) Order 1999, SI 1999/1320, is to be construed as derogating from any powers vested in the Judicial Committee apart from that Order: art 2(2).

13 Government of Wales Act 1998 Sch 8 para 35; Scotland Act 1998 Sch 6 para 36; Northern Ireland Act 1998 Sch 10 para 37.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

409 Appeals and references in respect of devolution issues

TEXT AND NOTES--Government of Wales Act 1998 s 109, Sch 8 replaced by the Government of Wales Act 2006 s 149, Sch 9. When the Constitutional Reform Act 2005 s 23(1) comes into force (ie 1 October 2009: see SI 2009/1604), the Judicial Committee of the Privy Council will have no jurisdiction in relation to devolution issues under the 2006 Act; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42G. Scotland Act 1998 s 33 amended, Sch 6 amended, s 103 repealed: 2005 Act Sch 9 paras 96, 101, 103-106, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604). Northern Ireland Act 1998 s 11 amended, s 82 repealed, Sch 10 amended: 2005 Act Sch 9 paras 109, 113, 115-119, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(iv) Other Jurisdiction/410. Appeals in Admiralty matters.

(iv) Other Jurisdiction

410. Appeals in Admiralty matters.

Appeals lie to the Judicial Committee from Admiralty courts in certain British possessions¹, and from the Court of Admiralty of the Cinque Ports². The jurisdiction once vested in the Judicial Committee on appeal from judgments or orders of the High Court of Admiralty, now the Admiralty Court, is vested in the Court of Appeal³.

In prize cases⁴, however, appeals from all Admiralty courts, including the High Court, lie to the Judicial Committee⁵. The appeal lies as of right in the case of a final decree, and in other cases with the leave of the court making the order or decree⁶.

1 See the Colonial Courts of Admiralty Act 1890 s 6(1) (under which the appeal lies as of right: see *Richelieu and Ontario Navigation Co v SS Cape Breton (Owners)* [1907] AC 112, PC); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 217. For the procedure on appeal see PARA 490 post. Appeal lies similarly from Vice-Admiralty Courts, where these exist; see the Colonial Courts of Admiralty Act 1890 s 9(3); and as regards appeals from Vice-Admiralty Courts in prize cases see PARA 490 post.

2 For an instance of such an appeal see *The Clarisse* (1856) 12 Moo PCC 340. As to the jurisdiction and procedure of the court see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 210 et seq.

3 See the Supreme Court Act 1981 ss 15, 16; and PARA 639 post.

4 See generally PRIZE.

5 See the Naval Prize Act 1864 ss 5, 6; and PRIZE vol 36(2) (Reissue) PARA 886. The jurisdiction of the Judicial Committee to hear appeals from judgments or orders of the High Court when acting as a prize court was preserved by the Supreme Court Act 1981 s 16(2): see PARA 639 post. For the rules of procedure see PARA 490 post.

6 Naval Prize Act 1864 s 5.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(iv) Other Jurisdiction/411. Ecclesiastical appeals.

411. Ecclesiastical appeals.

The jurisdiction in appeals from ecclesiastical courts previously exercised by the Judicial Committee as successor to the High Court of Delegates has ceased¹. The Ecclesiastical Jurisdiction Measure 1963 confers on Her Majesty in Council jurisdiction over appeals from judgments of the Arches Court of Canterbury and the Chancery Court of York given in causes of faculty not involving matter of doctrine, ritual or ceremonial², and these appeals are heard by the Judicial Committee³.

An appeal to Her Majesty in Council against a pastoral scheme made by the Church Commissioners lies at the instance of any person who duly made written representations with respect to the scheme in draft, but only with the leave of the Judicial Committee⁴. If leave is granted, the appeal will be heard by the Judicial Committee⁵. A statutory procedure is laid down for applying for leave to appeal, and for appeals⁶.

1 Ecclesiastical Jurisdiction Measure 1963 s 87, Sch 5, repealing the Privy Council Appeals Act 1832. This would include any jurisdiction from the Court of Chivalry: see PARA 860 post; and PEERAGES AND DIGNITIES.

2 See the Ecclesiastical Jurisdiction Measure 1963 s 1(3)(d), s 7(1)(b) (as amended), s 8(1); paras 805, 807 post; and ECCLESIASTICAL LAW. Leave to appeal is required: s 8(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 s 15). For a previous case of this class see *Rector and Churchwardens of the Parish of St Nicholas Acons v LCC* [1928] AC 469, PC.

3 Judicial Committee Act 1833 s 3 (amended by the Statute Law Revision (No 2) Act 1888); Order in Council making continuing Order directing that all appeals to Her Majesty in Council shall be referred to the Judicial Committee 1909, SR & O 1909/1228.

4 Pastoral Measure 1983 s 9(2).

5 Ibid s 9(6).

6 Ibid s 9(3), Sch 2. For the principles on which the Judicial Committee is guided when hearing these appeals see *Hargreaves v Church Comrs* [1983] 2 AC 457, [1983] 3 All ER 17, PC, in which earlier decisions were reviewed.

Her Majesty may also order the hearing by the Judicial Committee of an appeal against a scheme for a cathedral church prepared by the Cathedrals Statutes Commission: see the Cathedrals Measure 1976 s 3(4); and ECCLESIASTICAL LAW. However, the Cathedrals Measure 1999 makes new provision with respect to the constitution, statutes and administration of cathedrals which will apply to each cathedral existing on 30 June 1999 once the Archbishops of Canterbury and York are satisfied that a constitution and statutes complying with the provisions of Pt I (ss 1-27) have been framed in relation to that particular cathedral: see s 38. At such date, the Cathedrals Measure 1976 s 3(4) is repealed with respect to the cathedral in question: see the Cathedrals Measure 1999 ss 38(3), 39(2), Sch 3.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(iv) Other Jurisdiction/412. Appeals by medical practitioners.

412. Appeals by medical practitioners.

At the date at which this title states the law, medical practitioners have a right of appeal in certain circumstances to Her Majesty in Council against the following decisions of the Professional Conduct Committee, Committee on Professional Performance and Health Committee of the General Medical Council or of the General Medical Council itself:

- 45 (1) a direction that the practitioner's name be erased from the medical register;
- 46 (2) a direction that his registration be suspended or made conditional;
- 47 (3) a direction extending his suspension or varying the conditions on which he may practise;
- 48 (4) a direction that the practitioner's right to apply for restoration of his name to the register be suspended indefinitely¹.

Such appeals are heard by the Judicial Committee². Appeals against decisions of the Committee on Professional Performance and the Health Committee lie on a point of law only³; otherwise the appeal lies as of right, with no leave necessary. The Judicial Committee Act 1833 applies to these appeals as it applies to Commonwealth appeals⁴ but they are governed by a special procedure⁵ and express provision is made as to how the Judicial Committee may dispose of them⁶.

The National Health Service Reform and Health Care Professions Bill, which was before Parliament at the date at which this title states the law, includes provision taking away the right of appeal to Her Majesty in Council and replacing it with a right of appeal to the High Court⁷.

1 See the Medical Act 1983 s 40(1), (2), (4) (s 40 amended by the Medical (Professional Performance) Act 1995 s 4, Schedule paras 1, 8; and by the Medical Act 1983 (Amendment) Order 2000, SI 2000/1803, arts 2, 8); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 188.

2 See *ibid* s 40(4) (as amended: see note 1 *supra*); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 188.

3 See *ibid* s 40(5) (as amended: see note 1 *supra*); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 188.

4 See *ibid* s 40(6) (as amended: see note 1 *supra*); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 188.

5 See *ibid* s 40(4) (as amended: see note 1 *supra*); the Judicial Committee (Medical Rules) Order 1980, SI 1980/873; para 488 *post*; and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 188.

6 See the Medical Act 1983 s 40(7), (8) (s 40(7) as amended: see note 1 *supra*); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 188. The principles on which the Judicial Committee will act in this class of appeal stated in *Libman v General Medical Council* [1972] AC 217, [1972] 1 All ER 798n, PC, now need to be read in the light of appeals decided since the coming into force of the Human Rights Act 1998: see eg *Ghosh v General Medical Council* [2001] UKPC 29, [2001] 1 WLR 1915, [2001] All ER (D) 189 (Jun).

7 See the National Health Service Reform and Health Care Professions Bill (2001-2002 HL44) cl 28.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

412 Appeals by medical practitioners

NOTE 1--1983 Act s 40 further amended: National Health Service Reform and Health Care Professions Act 2002 Sch 9.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(iv) Other Jurisdiction/413. Appeals by other healthcare professionals.

413. Appeals by other healthcare professionals.

At the date at which this title states the law, analogous rights of appeal to Her Majesty in Council exist from decisions of committees of the professional bodies of other healthcare professions, namely dentists¹, veterinary surgeons², opticians³, osteopaths⁴ and chiropractors⁵ to remove or suspend the name of a practitioner⁶. In each case the appeal is heard by the Judicial Committee. Special rules have been made regulating the procedure on these appeals, which is similar to that for an appeal against erasure from the register by a medical practitioner⁷. The appeal lies as of right and by statute, no leave being necessary, but in the case of decisions of Health Committees the appeal lies only on a point of law⁸.

The rights of appeal to Her Majesty in Council by practitioners of the professions referred to in this paragraph will be taken away by the National Health Service Reform and Health Care Professions Bill, which was before Parliament at the date at which this title states the law⁹, and replaced with a right of appeal to the High Court¹⁰, save that veterinary surgeons' rights of appeal will not be affected.

1 See the Dentists Act 1984 s 29; and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARAS 454, 478, 483.

2 See the Veterinary Surgeons Act 1966 s 17; and ANIMALS vol 2 (2008) PARA 1174.

3 See the Opticians Act 1989 s 23; and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 866.

4 See the Osteopaths Act 1993 s 31; and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 588.

5 See the Chiropractors Act 1994 s 31; and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 688.

6 See also the Professions Supplementary to Medicine Act 1960 s 9 (prospectively repealed by the Health Act 1999 ss 60, 65, Sch 3 paras 1(h), 7, Sch 5 which enables the right of appeal from decisions of the Boards governing professions formerly regulated by the 1960 Act to the Privy Council to be abolished by Order in Council); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 188. The Health Professions Order 2001, SI 2001/254, art 38 effects this repeal. At the date at which this title states the law, the provisions of the 2001 Order were not fully in force.

7 See PARA 489 post.

8 As to the scope of this appellate jurisdiction see *Preiss v General Dental Council* [2001] UKPC 36, [2001] 1 WLR 1926, [2001] IRLR 696. See also PARA 412 note 6 ante.

9 See PARA 412 the text and note 7 ante.

10 See the National Health Service Reform and Health Care Professions Bill (2001-2002 HL44) cl 29 (dentists), cl 30 (opticians), cl 31 (osteopaths) and cl 32 (chiropractors). See also note 6 supra.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

413 Appeals by other healthcare professionals

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--Repeal of 1960 Act s 9 now in force: SI 2002/1167, SI 2003/1689. Reference to SI 2001/254 should be to SI 2002/254.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(iv) Other Jurisdiction/414. Jurisdiction as to House of Commons disqualification.

414. Jurisdiction as to House of Commons disqualification.

Any person who claims that a person purporting to be a member of the House of Commons is disqualified by the House of Commons Disqualification Act 1975, or has been so disqualified at any time since his election, may apply to Her Majesty in Council for a declaration to that effect, and the application is referred to the Judicial Committee in the same manner as an appeal from a court¹.

¹ House of Commons Disqualification Act 1975 s 7. See further PARLIAMENT vol 78 (2010) PARA 912.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) JURISDICTION/(iv) Other Jurisdiction/415. Special reference to Judicial Committee.

415. Special reference to Judicial Committee.

Her Majesty may refer to the Judicial Committee for hearing or consideration any other matter whatsoever as Her Majesty shall think fit¹, not necessarily arising from a judicial decision. This is called a special reference. The Judicial Committee advises Her Majesty upon it in the same way as on an appeal².

Under this power the Judicial Committee has considered and reported on such matters as the conduct and powers of colonial judges in their office³, the jurisdiction of a colonial court to commit for contempt of court⁴, the professional behaviour and the rights and privileges of practitioners in colonial courts⁵, the power of the Governor of a colony to remit sentences for contempt of court⁶, the power of the Crown to annex a colony to another⁷, legislation in Jersey⁸, the privileges of the Jersey Bar⁹, the power of the executive in Guernsey¹⁰, the officers of the Royal Court in Guernsey¹¹, the status and jurisdiction of Church of England bishops in the colonies¹², the determination by a legislative council of questions concerning a member of its body¹³, the relative powers of the chambers of a legislature¹⁴, the rights of the British South Africa Company to land in the former Southern Rhodesia¹⁵, boundary issues between colonies or dominions¹⁶, the question of the right to appoint a boundary commissioner to represent Northern Ireland on the Irish Boundary Commission¹⁷, the eligibility of a person to sit and vote in the House of Commons¹⁸, the law of piracy *jure gentium*¹⁹ and whether the House of Commons would be acting contrary to the Parliamentary Privilege Act 1770 in treating the issue of a writ against a member in respect of a speech or proceeding by him in Parliament as a breach of its privileges²⁰.

1 Judicial Committee Act 1833 s 4 (amended by the Statute Law Revision (No 2) Act 1888). Where a special reference is made it need not necessarily be carried out under this power, so that the Committee advises judicially; the right exists to refer to a general committee including judicial members: *D'Allain v Le Breton* (1857) 11 Moo PCC 64 at 70, 75; *Re Jersey States* (1853) 9 Moo PCC 185 at 186 (mixed committee with law officers as assessors).

2 Judicial Committee Act 1833 s 4 (as amended: see note 1 supra).

3 *Re Wells* (1840) 3 Moo PCC 216; *Re Representatives etc of Grenada and Sanderson* (1847) 6 Moo PCC 38; *Montagu v Lieutenant-Governor of Van Dieman's Land* (1849) 6 Moo PCC 489; *Cloete v R* (1854) 8 Moo PCC 484; *Re Walker* (1908) Times, 16 December (Suspension by Governor in Council approved); *Re Bedard* (1849) 7 Moo PCC 23 at 29 (judicial precedence).

4 *McDermott v British Guiana Judges* (1868) LR 2 PC 341; *Smith v Sierra Leone Justices* (1841) 3 Moo PCC 361; *Re Ramsay* (1870) LR 3 PC 427.

5 *Re Monckton* (1837) 1 Moo PCC 455; *Smith v Sierra Leone Justices* (1848) 7 Moo PCC 174; *Rainy v Sierra Leone Justices* (1853) 8 Moo PCC 47; *Emerson v Judges of Newfoundland* (1854) 8 Moo PCC 157; *Re Wallace* (1866) LR 1 PC 283; *Re Pollard* (1868) LR 2 PC 106.

6 *Re Special Reference from the Bahama Islands* [1893] AC 138, PC.

7 *Re Cape Breton* (1846) 5 Moo PCC 259.

8 *Re Jersey States* (1853) 9 Moo PCC 185; *Re Jersey States Representation* (1862) 15 Moo PCC 195; *Re Jersey States, Re Gibaut's Petition* (1858) 11 Moo PCC 320.

9 *Re Jersey Bar* (1859) 13 Moo PCC 263; *Re Jersey Jurats* (1866) LR 1 PC 94 (election of new jurat on resignation or death).

10 *Re Bailiffs etc Guernsey* (1844) 5 Moo PCC 49.

- 11 *Re Guernsey States Petition* (1861) 14 Moo PCC 368.
- 12 *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115. Cf *Ward v Bishop of Mauritius* (1906) 95 LT 854, PC.
- 13 *A-G of Queensland v Gibbon* (1887) 12 App Cas 442, PC.
- 14 Queensland Money Bills Case, 3 April 1886; C 4794 (1886).
- 15 *Re Southern Rhodesia* [1919] AC 211, PC.
- 16 Legal News (Montreal) 1882 pp 281-282.
- 17 Cmd 2214.
- 18 *Re MacManaway, Re House of Commons (Clergy Disqualification) Act 1801* [1951] AC 161, PC.
- 19 *Re Piracy Jure Gentium* [1934] AC 586, PC.
- 20 *Re Parliamentary Privilege Act 1770* [1958] AC 331, [1958] 2 All ER 329, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(i) In general/416. Regulation of practice.

(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS

(i) In general

416. Regulation of practice.

The practice and procedure of the Judicial Committee in Commonwealth appeals is regulated by the Judicial Committee (General Appellate Jurisdiction) Rules 1982¹, which apply to all appeals unless there is a contrary provision². As amended the rules contain a schedule of Council Office fees payable by parties to an appeal³.

1 See the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, SI 1982/1676, Sch II (amended by SI 1990/2297; and SI 1996/3170). The rules set out therein may be cited as the Judicial Committee (General Appellate Jurisdiction) Rules: Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, SI 1982/1676, art 3.

2 Ibid art 3. Contrary provisions is made, eg, by the Brunei Appeals (Amendment) Order 1998, SI 1998/255: see PARA 406 note 2 ante.

3 Judicial Committee (General Appellate Jurisdiction) Rules Sch B (substituted by SI 1996/3170).

UPDATE**401-490 The Judicial Committee of the Privy Council**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

416 Regulation of practice

TEXT AND NOTES--SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(i) In general/417. Agents.

417. Agents.

The conduct of proceedings in the Judicial Committee is by agent¹, unless the litigant is acting in person². A solicitor practising in London who produces his practising certificate and signs a declaration in the prescribed form, engaging to observe the rules, regulations, orders and practice of the Privy Council and to pay on demand all fees and charges due in respect of any appeal, petition or other matter, is admitted to practise as a Privy Council agent³.

Solicitors not practising in London, but admitted by the High Court in England and Wales or by the Court of Session in Scotland, may apply by petition to the Judicial Committee for leave to practise before it, and may be admitted to practise by an Order of their lordships for such period and under such conditions as may be directed⁴.

Any Privy Council agent who wilfully acts in violation of the rules and practice of the Privy Council or who misconducts himself in the prosecution of proceedings before their lordships or who refuses or omits to pay, on demand, the Council Office fees or charges payable by him, is liable to an absolute or temporary prohibition to practise before the Judicial Committee, on cause shown, at their lordships' Bar⁵.

1 'Agent' means a person qualified by virtue of the Order in Council dated 6 March 1896 to conduct proceedings before Her Majesty in Council on behalf of another: Judicial Committee (General Appellate Jurisdiction) Rules r 1(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 As to the right of audience of advocates see LEGAL PROFESSIONS.

3 Order in Council dated 6 March 1896 rr I, II.

4 Ibid r III. The Order in Council also provides in similar terms for applications by solicitors admitted by the High Court in Ireland or High Courts in any of Her Majesty's dominions.

5 Ibid r IV.

UPDATE**401-490 The Judicial Committee of the Privy Council**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

417 Agents

NOTE 1--Rules replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (ii) Leave to Appeal/418. Leave to appeal; in general.

(ii) Leave to Appeal**418. Leave to appeal; in general.**

Appeals may be brought only in pursuance of leave obtained from the court appealed from, or, in the absence of such leave, in pursuance of special leave from the Judicial Committee¹. The grant of leave by the court appealed from is governed by the terms of the instrument regulating appeals from that court². The necessity for seeking special leave arises when the court below does not possess the power to grant leave in the particular matter or has for some other reason refused leave. Leave may have been refused, for example, where the amount in dispute is below the appealable value³ or where the application for leave has not been made within the prescribed time. Special leave may be confined to one or more specific issues of those raised in the proceedings below⁴. The power of the courts below to grant leave does not normally extend to criminal cases, except where issues of constitutional interpretation are involved⁵.

If Her Majesty is Sovereign of the territory concerned, special leave may be granted to appeal from a court where no provision is made for appeal to Her Majesty in Council, if the Crown's prerogative is not expressly withdrawn, and if the appeal would have lain had that court not been established⁶. There is power to admit appeals where the court below is not a court of errors or a court of appeal⁷. Special leave may also be sought, it seems, to avoid having recourse to an intermediate court of appeal, where a question of law is raised by the proceedings⁸ or if the appellant desires to avoid application to the local court of appeal⁹; but where a suitor, having a choice whether to appeal to a superior court in the territory concerned or to the Judicial Committee, elects the former remedy and subsequently seeks special leave to appeal from the judgment of the superior court, it is not the practice to grant him special leave to appeal except in a very strong case¹⁰.

Special leave to appeal will not be granted from the decision of a statutory tribunal if it was never the intention to create a tribunal with the ordinary incident of appeal to the Crown¹¹, and

the same considerations would seem to apply to a determination of a court exercising a special statutory jurisdiction from which it was never intended that there should be an appeal¹². An objection that no appeal lies may be taken even where special leave has been granted¹³, but when a petition for special leave discloses a question as to jurisdiction to entertain the appeal it is the general practice to endeavour to give a final decision on the point before granting leave¹⁴.

Special leave will be granted on a second petition only in exceptional circumstances¹⁵.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 2. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 See PARA 407 ante. Where the hearing of an action is divided into two parts, justice requires that the result of the first part should be treated as a final (not interlocutory) judgment for the purposes of an application for leave to appeal to the Privy Council: *Strathmore Group Ltd v AM Fraser* [1992] 2 AC 172.

3 See eg *Durity v Judicial and Legal Service Commission* [1996] 2 LRC 451, Trinidad and Tobago CA. In such a case special leave to appeal may be sought not only on the ground of the amount in dispute but also on the ground that the question involves some general right: *Gungowa Kome Malupa v Erawa Kome Jogapa* (1870) 13 Moo Ind App 433, PC; *Brown v McLaughan* (1870) LR 3 PC 458. See also *Wilson v Callender* (1854) 9 Moo PCC 100; *Bank of Australasia v Harris* (1861) 15 Moo PCC 97. Special leave to appeal from the decision is competent along with a petition for leave to appeal from refusal of the appeal (*Frith v Frith* [1906] AC 254, PC); but even where it can be shown that the Court of Appeal should (but did not) have given leave as of right, the grant of special leave by the Judicial Committee will be a matter of discretion (*Lopes v Valliappa Chettiar* [1968] AC 887 at 894, [1968] 2 All ER 136 at 138, PC). The appealable value must be decided on the basis of the judgment against which it is sought to appeal: *Fletcher v Income Tax Comr* [1972] AC 414, [1971] 3 All ER 1185, PC. See also *Meghji Lakhamshi & Bros v Furniture Workshop* [1954] AC 80, [1954] 1 All ER 273, PC; and *Skelton v Jones* [1962] 3 All ER 85n, [1962] 1 WLR 840, PC. A judgment for unliquidated damages cannot give rise to an appeal as of right on the basis of appealable value but where it can be said that it is virtually certain that the damages ultimately awarded will be in excess of the appealable amount the Court of Appeal might think it right in general to grant leave in its discretion: *Zuliani v Veira* [1994] 1 WLR 1149 at 1155, PC. Where no appeal lies as of right in a divorce suit the fact that the decree may directly or indirectly involve a question of maintenance of value above the appealable limit does not entitle an appeal as of right: *Hui Shiu Wing v Cheung Yuk Lin (alias Lorretta Cheung)* [1969] 1 AC 131, PC.

4 *Annapurnabai v Ruprao* (1924) LR 51 Ind App 319, PC. Leave has been granted in a case where the appellant was seeking leave to appeal against part of a judgment although not against the order made on the judgment: *Australian Consolidated Press v Uren* [1969] 1 AC 590, [1967] 3 All ER 523, PC. In *Nirmal v R* [1972] Crim LR 226, where the appellant's conviction had been quashed and a new trial ordered, special leave was granted to appeal against that part of the judgement below which ordered a new trial.

5 See PARA 408 ante; and see eg the Constitution of Trinidad and Tobago s 109(1)(c); and *Thomas v Baptiste* [2000] 2 AC 1, [1999] 2 LRC 733, PC.

6 *Re Wi Matua's Will* [1908] AC 448, PC. Cf *Crown Grain Co Ltd v Day* [1908] AC 504, PC, where it was denied that Manitoba could take away the right of appeal to the Supreme Court of Canada in the case of liens; *Toronto Rly Co v Toronto City* [1920] AC 426, PC, where it was held that appeal lay from a Board of Railway Commissioners for Canada when exercising judicial functions.

7 See the Judicial Committee Act 1844 s 1 (as amended); and PARA 403 ante.

8 *Harrison v Scott* (1846) 5 Moo PCC 357.

9 This is rare, but see *Re Barnett* (1844) 4 Moo PCC 453; *Harrison v Scott* (1846) 5 Moo PCC 357; *A-G of Jamaica v Manderson* (1848) 6 Moo PCC 239.

10 *Clergue v Murray* [1903] AC 521, PC; *Victorian Rly Comrs v Brown, ex p Victorian Rly Comrs* [1906] AC 381, PC.

11 *Théberge v Laudry* (1876) 2 App Cas 102, PC; *Lord Strickland v Grima* [1930] AC 285, PC; *Senanayake v Navaratne* [1954] AC 640, [1954] 2 All ER 805, PC; *Arzu v Arthurs* [1965] 1 WLR 675, PC.

12 *Patterson v Solomon* [1960] AC 579, [1960] 2 All ER 20, PC.

13 *Patterson v Solomon* [1960] AC 579 at 589, [1960] 2 All ER 20 at 24, PC.

14 *Dennis Hotels Pty Ltd v State of Victoria* [1962] AC 25 at 58, 59, [1961] 2 All ER 940 at 948, PC. The practice was not followed in *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645, [1968] 3 All ER 561, PC.

15 *Indravani Ramjattan v the State* (1999) 143 Sol Jo LB 95, PC, where a second petition relying on psychiatric evidence that was not available when the first petition was dismissed was granted and the matter was remitted to the Court of Appeal to consider the fresh evidence. See also *Angela Ramdeen v the State* (23 March 2000, unreported), PC, where the Privy Council indicated that it was willing to entertain a fresh petition even after an appeal by the petitioner had been dismissed after a full hearing, though the matter was not finally decided. Cf *Ogilvy v Minister of Legal Affairs* [2002] UKPC 7, [2002] All ER (D) 189 (Feb), where the registrar's refusal to receive a second petition was upheld.

UPDATE

401-490 The Judicial Committee of the Privy Council

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418 Leave to appeal; in general

NOTE 1--Rules replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (ii) Leave to Appeal/419. Special leave in civil cases.

419. Special leave in civil cases.

It is not the practice of the Judicial Committee to grant special leave to appeal unless the case raises either a far-reaching question of law or matters of dominant public importance¹, and however proper a case may be for serious consideration, it will not be dealt with if the practical issue has been solved otherwise, for example by legislation². Special leave will not be granted in order that an abstract point of law which did not arise in the case may be determined³. Leave will also be refused where the case can best be decided in the court below⁴ and where legislation provides that the decision of the Court of Appeal shall be final⁵.

Appeals are not allowed merely on questions of costs, even though the costs in issue may amount to an appreciable sum, or to the sum which, when appeal was made, was alleged to be the amount involved⁶, but an appeal may be allowed if there has been a mistake upon a matter of law which governs the costs⁷. Where constitutional questions of importance are raised and special leave is refused, a successful overseas government does not usually ask for costs⁸.

In certain cases it is probable that the Judicial Committee will grant special leave to appeal, for example where the question is as to the construction of an Act and is of general interest in the country concerned⁹; where the custody of children¹⁰ or the liberty of the subject¹¹ is concerned; with a view to preventing further litigation¹² or avoiding unnecessary litigation¹³; or where the question at issue is one of great importance, irrespective of money value¹⁴, or raises the question of the jurisdiction to entertain appeals¹⁵.

- 1 *Daily Telegraph Newspaper Co v McLaughlin* [1904] AC 776, PC; *Khan Chinna v Markanda Kothan* [1921] WN 353, PC; *Thillai Chetty v Shanmuganathan Chettiar* [1922] WN 7, PC; *Albright v Hydro-Electric Power Commission of Ontario* [1923] AC 167, PC; *Baldwin v O'Brien* [1919] WN 182, PC. Even though the case may be of substantial character and raise an important question of law, special leave will not be granted if the judgment below was plainly right: *Montréal Cité v St Sulpice de Montréal* (1889) 14 App Cas 660, PC. As no question of general importance usually arises in patent cases, the Judicial Committee deprecates the granting of special leave to appeal in cases of that nature in which there are concurrent judgments: *Pope Appliance Corp v Spanish River Pulp and Paper Mills Ltd* [1929] AC 269, PC. For an instance where special leave to appeal from a requisitioning order of the prize court was refused see *The Canton* [1917] AC 102, PC.
- 2 *New South Wales Taxation Comrs v Baxter* [1908] AC 214, PC.
- 3 *R v Louw, ex p A-G for the Cape of Good Hope* [1904] AC 412, PC; see also *Australian Consolidated Press v Uren* [1969] 1 AC 590, [1967] 3 All ER 523, PC.
- 4 *Hull & Co v M'Kenna* [1926] IR 402 at 404, 405, PC, per Viscount Haldane.
- 5 *De Morgan v Director-General of Social Welfare* [1998] AC 275, [1998] 2 WLR 427, PC.
- 6 *Attenborough v Kemp* (1861) 14 Moo PCC 351; *Richards v Birley* (1864) 2 Moo PCCNS 96; *The Orient* (1871) LR 3 PC 696 at 702; *Wilson v R* (1866) LR 1 PC 405; *Credit Foncier of Mauritius v Paturan* (1876) 35 LT 869, PC; *Rieken v Yorke Peninsula Justices* [1908] AC 454, PC. See also *Nana Atta Marikari v Nana Oware Agye Kum II* [1955] AC 640, [1955] 2 All ER 654, PC.
- 7 *The Orient* (1871) LR 3 PC 696; *Emery and Kelly v Binns* (1850) 7 Moo PCC 195; *Musshmat Keemee Baee v Latchman Das Narrain Das* (1837) 1 Moo Ind App 470.
- 8 *Welsbach Light Co of Australasia Ltd v Commonwealth of Australia and A-G for Australia* (1917) 33 TLR 382, PC.
- 9 *Brown v McLaughan* (1870) LR 3 PC 458; *Sun Fire Office v Hart* (1889) 14 App Cas 98, PC (Windward Islands; general interest to insurance companies); *Re A-G for Victoria* (1860) LR 1 PC 147; *Jerusalem-Jaffa District Governor v Suleiman Murra* [1926] AC 321, PC; *Daily Telegraph Newspaper Co v McLaughlin* [1904] AC 776, PC.
- 10 *Camilleri v Fleri* (1845) 5 Moo PCC 161.
- 11 *Re McDermott* (1866) LR 1 PC 260. Leave was refused from a Gibraltar decision refusing habeas corpus to a political prisoner, the local ordinance being clearly a valid ground of detention: *Re Pasha Zaghlul* (1923) 67 Sol Jo 382, PC.
- 12 *Salisbury Gold Mining Co v Hathorn* [1897] AC 268, PC.
- 13 *Australian Consolidated Press v Uren* [1969] 1 AC 590, [1967] 3 All ER 523, PC.
- 14 *Le Mesurier v Le Mesurier* [1894] AC 283, PC; *Le Mesurier v Le Mesurier* [1895] AC 517, PC; *Board v Board* [1919] AC 956, PC; *Watts and A-G for British Columbia v Watts* [1908] AC 573, PC; *Walker v Walker* [1919] AC 947, PC.
- 15 *Ibralebbe v R* [1964] AC 900, [1964] 1 All ER 251, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

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419 Special leave in civil cases

NOTE 1--See *Ford v Labrador* [2003] UKPC 41, [2003] 1 WLR 2082 (no grounds to doubt soundness of decisions of Chief Justice or Court of Appeal in regarding defamation claim so as to give rise to special ground of appeal).

NOTE 5--*De Morgan*, cited, applied: *Grant v R* [2004] UKPC 27, [2004] 2 AC 550.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (ii) Leave to Appeal/420. Special leave in criminal cases.

420. Special leave in criminal cases.

The Judicial Committee does not as a rule grant special leave to appeal in criminal cases except where questions are raised of great and general importance which are likely to occur often and where the due and orderly administration of the law is shown to be interrupted or diverted into a new course, which might create a precedent for the future, and where there are no other means of preventing these consequences¹; or it is shown that, by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done².

1 *Esnouf v A-G for Jersey* (1883) 8 App Cas 304 at 308, PC; *Riel v R* (1885) 10 App Cas 675, PC; *Re Dillet* (1887) 12 App Cas 459, PC; *Falkland Islands Co v R* (1863) 1 Moo PCCNS 299 at 312; *Ex p Deeming* [1892] AC 422, PC; *Kops v R, ex p Kops* [1894] AC 650, PC; *Ex p Carew* [1897] AC 719, PC; *Ex p Aldred* [1902] AC 81, PC; *R v Bertrand* (1867) LR 1 PC 520 at 530. Cf *Re McDermott* (1866) LR 1 PC 260; and see *R v Murphy* (1868) LR 2 PC 35; *R v Coote* (1873) LR 4 PC 599; *Badger v A-G for New Zealand* (1907) 97 LT 621, PC; *Brown v A-G for New Zealand* [1898] AC 234, PC; *R v Marais, ex p Marais* [1902] AC 51, PC; *Nelson v R* [1902] AC 250, PC; *Tshingumuzi v A-G of Natal* [1908] AC 248, PC; *Sutton v R* [1933] AC 348, PC; *Renouf v A-G for Jersey* [1936] AC 445, [1936] 1 All ER 936, PC; *Thornton v Police* [1962] AC 339, [1962] 3 All ER 88n, PC; *DPP v Walker* [1974] 1 WLR 1090 at 1095-1096, PC.

2 *Re Dillet* (1887) 12 App Cas 459, PC, the leading case on criminal appeals before the Judicial Committee, where appeal was allowed from a conviction for perjury and subsequent striking off the rolls; cf *Re Taylor* [1912] AC 347, PC and *Ibrahim v R* [1914] AC 599, PC. In *Muhammad Nawaz (alias Nazu) v King Emperor* (1941) LR 68 Ind App 126, PC, Viscount Simon LC, giving the judgment of the Judicial Committee, gave an exhaustive exposition of the principles upon which leave to appeal is granted or refused in criminal cases. See also *Practice Note* (1932) 48 TLR 300, PC, referred to in para 456 note 1 post. In *Knowles v R* [1930] AC 366, PC, special leave was given to appeal from the Ashanti Court and the conviction for murder quashed as the judge had failed to put before himself the possibility of manslaughter. In *Lanier v R* [1914] AC 221, PC, irregularities of a serious kind resulted in setting aside a conviction and ordering payment of costs by the Government of Seychelles. In *A-G for Canada v Fedorenko* [1911] AC 735, PC, appeal was allowed against a grant of habeas corpus in a Manitoba case of extradition proceedings. In *Mahlikilili Dhalamini v R* [1942] AC 583, [1943] 1 All ER 463, PC, an appeal was allowed and conviction set aside because of the opinions given in private where a local custom was in question; and in *Akerele v R* [1943] AC 255, [1943] 1 All ER 367, PC, an appeal was allowed where in the Committee's opinion the distinction between civil and criminal liability had been inexactly drawn; but in *Fakisandhla Nkambule v R* [1940] AC 760, [1940] 3 All ER 184, PC, and *Mirza Akbar v R* [1940] 3 All ER 585, PC, appeals were dismissed, there being no substantial miscarriage of justice.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (ii) Leave to Appeal/421. Petition for leave.

421. Petition for leave.

Application for special leave to appeal to the Judicial Committee is by petition¹. The petition² must state succinctly all³ such facts as it may be necessary to state in order to enable the Judicial Committee to decide whether leave ought to be granted, and must be signed by counsel who attends at the hearing or by the party himself if he appears in person; it must deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which leave is sought⁴. It is necessary that there should be the utmost good faith on the part of the petitioner⁵, and he should see that the facts are correctly brought to the Committee's notice⁶.

The petitioner must lodge seven copies of his petition for special leave to appeal, together with a supporting affidavit and seven copies of the judgment from which leave to appeal is sought⁷; unless a caveat⁸ has been lodged by the other parties who appeared in the court below an affidavit of service of notice of the intended application⁹ upon those parties or their solicitors or agents must also be lodged¹⁰. The petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed from, but must be lodged with the least possible delay¹¹. Where special leave to appeal is granted, the order granting such leave must specify the amount of security for costs, if any, to be lodged by the petitioner and provide for the transmission of the record¹² by the registrar or other proper officer of the court appealed from to the Registrar of the Privy Council, and for such further matters as the justice of the case may require¹³. The order need not, however, provide for transmission of the record where an authenticated record was produced at the hearing of the petition and is accepted as such¹⁴. Unless otherwise ordered the security may be lodged any time before the appellant enters an appearance¹⁵, and, unless the parties otherwise consent, the security is deposited in cash¹⁶.

1 Judicial Committee (General Appellate Jurisdiction) Rules rr 2(b), 3. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 For a form of petition see Court Forms.

3 Special leave to appeal may be rescinded on failure to draw the Judicial Committee's attention to relevant matters, eg a statute, knowledge of which might have made a difference with regard to the granting or refusing of the leave: *Emerson-Brantingham Implement Co v Schofield* [1920] AC 415, PC.

4 Judicial Committee (General Appellate Jurisdiction) Rules r 3; *Lyll v Jardine* (1870) LR 3 PC 318; *Mussoorie Bank Ltd v Raynor* (1882) 7 App Cas 321 at 330, PC; *Baudains v Jersey Banking Co* (1888) 13 App Cas 832, PC; *Goree Monee Dossee v Juggut Indro Narain Chowdery* (1866) 11 Moo Ind App 1, PC; *Sheo Singh Rai v Mussumut Dakho* (1878) LR 5 Ind App 87, PC; see also *Ex p Kennington* (1862) 8 Jur NS 1111, PC. A petition for special leave to appeal to appeal in a criminal matter ought to state a prima facie case on the facts, and submit that what had happened was contrary to natural justice or had involved a miscarriage of justice: *Practice Note* [1935] WN 167, PC.

5 *Ram Sabuk Bose v Monmohini Dossee* (1874) LR 2 Ind App 71 at 81, PC.

6 *Toronto Rly Co v Toronto City* [1920] AC 426, PC.

7 Judicial Committee (General Appellate Jurisdiction) Rules r 4(a), (b); *Registrar's Practice Direction: Copies of Documents* (21 September 2000) PARA 2. For a form of supporting affidavit see Court Forms.

8 As to caveats see PARA 439 post.

9 For a form of affidavit of service of notice see Court Forms.

10 Judicial Committee (General Appellate Jurisdiction) Rules r 4(c). As to affidavit in support see r 50; and as to caveat see r 48. See also *Practice Note* [1925] WN 164, PC. As to petitions see further the Judicial Committee (General Appellate Jurisdiction) Rules rr 47-50, 52-59, applied to petitions for special leave to appeal by r 7, and PARAS 438-447 post.

11 Ibid r 5.

12 'Record' means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, judgments and order granting leave to appeal) proper to be laid before Her Majesty in Council on the hearing of the appeal: *ibid* r 1(1).

13 Ibid r 6(1). As to security for costs see eg *Electrotec Services Ltd v Issa Nicholas (Grenada) Ltd* [1998] 1 WLR 202, PC (Judicial Committee's inherent jurisdiction to order security for costs ought to be exercised only in exceptional cases).

14 Ibid r 6(3).

15 Ibid r 6(2). As to entry of appearance by the appellant see PARA 426 post.

16 *Corporation Agencies Ltd v Home Bank of Canada* [1926] WN 58, PC. As to dealing with security after the hearing see PARA 464 post.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

421 Petition for leave

NOTE 13--See also *Crawford v Financial Institutions Services Ltd* [2003] UKPC 49, [2003] 1 WLR 2147.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (ii) Leave to Appeal/422. Appeal as a poor person.

422. Appeal as a poor person.

A petition for special leave to appeal may include a prayer for special leave to appeal as a poor person¹. The petition must be accompanied by a certificate of counsel that he has reasonable ground of appeal², and by an affidavit stating that the petitioner is not worth £500 in the world excepting his wearing apparel and his interest in the subject matter of the appeal, and that he is unable to provide sureties³. Leave to appeal as a poor person is not given as a matter of course⁴.

A petitioner who obtains leave to appeal as a poor person is relieved from the payment of Council Office fees and from lodging security for the respondent's costs⁵. If a petition to appeal as a poor person is dismissed, the petitioner may be excused from payment of the Council Office fees usually chargeable to a petitioner in respect of a petition for leave to appeal⁶.

An appellant as a poor person may be awarded costs on the poor person's scale⁷.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 3(2). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Ibid r 8(b). See also *Lait v Bailey* (1851) 7 Moo PCC 436; *Watts v Beaman* (1854) 9 Moo PCC 81; *Mitchell v New Zealand Loan and Mercantile Co, ex p Mitchell* [1904] AC 149, PC; *Ponamma v Arumogan, ex p Ponamma* [1902] AC 561, PC; *Quinlan v Child, Quinlan, ex p Quinlan* [1900] AC 496, PC; *Quinlan v Quinlan* [1901] AC 612, PC. The Committee will not normally grant leave to appeal as a poor person where the court below has power to grant leave on the usual conditions, unless in the first instance an application for leave to appeal has been made within due time to that court: *Ex p Walker* [1903] AC 170, PC; see also *Butler v Plantation Versailles and Schoon Ord Estate Ltd* [1970] 1 WLR 965n, PC. The 'reasonable ground' must be within the limits of the jurisdiction exercised by the Judicial Committee; the giving of ill-considered certificates is a serious dereliction of duty: see as to criminal appeals *Practice Note* [1938] WN 339, PC; *Practice Note* [1941] WN 172, PC; *Practice Note* [1943] WN 224.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 8(a); and see *Kelly v Corlett* (1860) 14 Moo PCC 89. A petition to continue an appeal as a poor person when the petitioner had failed to comply with an order to give security in proceedings to administer an estate was rightly rejected: *Sabriti Thakurain v Savi* (1921) 37 TLR 304, PC. For a form of affidavit see Court Forms.

Although a petition for special leave to appeal as a poor person may be dismissed owing to the petitioner's financial circumstances, leave to appeal in the ordinary way may be given: *Grant v Australian Knitting Mills* [1933] WN 275, PC. Where a minor by his next friend applied for special leave to appeal as a poor person, and the minor was found to be a poor person but the next friend was not so found, leave to appeal as a poor person was refused, but leave to appeal in the ordinary way was granted: *Practice Point* [1940] WN 43, PC.

4 *Quinlan v Quinlan* [1901] AC 612, PC; leave was refused in *Mitchell v New Zealand Loan and Mercantile Co, ex p Mitchell* [1904] AC 149, PC. A petition will not be granted automatically merely because a certificate has been furnished by counsel: *Nelson v East African Newspapers (Nation Series) Ltd* [1963] 3 All ER 812, [1963] 1 WLR 696, PC.

5 Judicial Committee (General Appellate Jurisdiction) Rules r 9.

6 Ibid r 10.

7 See ibid r 81; and PARA 463 post.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(iii) The Record/423. Preparation of the record.

(iii) The Record

423. Preparation of the record.

As soon as an appeal has been admitted, whether by an order of the court appealed from or by an order granting special leave to appeal (unless in such case the order otherwise provides), the appellant is required without delay to take all necessary steps to have the record¹ transmitted to the Registrar of the Privy Council². Undue delay by an appellant to comply with this provision may result in the special leave to appeal being rescinded and the respondent being granted his costs³.

The registrar or other proper officer of the court appealed from must, with all convenient speed, certify to the Registrar of the Privy Council that the respondent has received notice, or is otherwise aware, of the appeal and of the dispatch of the record to England⁴. The record must be reproduced in accordance with prescribed rules, and may be either printed abroad or duplicated or printed in England⁵. The rules prescribe the order in which the documents are to be arranged and how they are to be numbered, marked and headed⁶. Where the record is reproduced abroad, the registrar of the court appealed from must, at the appellant's expense, transmit to the Registrar of the Privy Council 30 copies of the record, one of which he must certify to be correct by signing his name on, or initialling, every eighth page of it, and by affixing to it the seal (if any) of the court appealed from⁷. If on arrival in the Judicial Committee Registry of a record which has been reproduced abroad it has been found not to have been reproduced in accordance with the rules, the registrar may direct that it be rearranged or that further copies be made⁸.

Where the record is to be reproduced in England, the registrar of the court appealed from must, at the appellant's expense, transmit to the Registrar of the Privy Council one certified copy of the record, together with an index of all the papers and exhibits in the case⁹. No other certified copies of the record may be transmitted to the agents in England by or on behalf of the parties to the appeal¹⁰.

There must be included in the record the order of the court appealed from granting leave to appeal to the Privy Council or, as the case may be, the order granting special leave to appeal¹¹, and also the reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the appeal arises¹².

1 For the meaning of 'the record' see PARA 421 note 12 ante.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 11(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. Where an appeal has been admitted

by order granting special leave to appeal and an authenticated copy of the record was produced at that hearing, then that copy may be accepted as the record proper for the purpose of the appeal: r 6(3).

3 Ibid r 11(3)-(5).

4 Ibid r 11(2).

5 Ibid r 12(1), (2). The record must be reproduced on A4 ISO paper: r 12(2), Sch A r 1(1). Each page must be numbered, the number of lines on each page of type must be 47 or thereabouts, and every tenth line must be numbered in the margin: Sch A r 1(2), (3).

6 See ibid Sch A rr 2-7. The record must, where practicable, be arranged in two parts in the same volume, with the pleadings and proceedings, the transcript of the evidence of the witnesses, the judgments, orders etc, of the courts below down to the order admitting the appeal in Part I and the exhibits and documents in Part II, and the index to both parts placed at the beginning of Part I: Sch A rr 2, 3(1).

7 Ibid r 13(1).

8 Ibid r 13(2).

9 Ibid r 14(1).

10 Ibid r 14(2).

11 Ibid r 15.

12 Ibid r 16. Reports, if any, on the value of the subject matter must be included in the record: *Practice Note* [1933] WN 148. The tribunal from whose decision the appeal arises is not bound to give its reasons: *Nana Osei Assibey III, Kokofuhene v Nana Kwasi Agyeman Boagyaahene* [1952] 2 All ER 1084, PC. It has, however, been held that where it fails to do so the Board is entitled to look at an affidavit of junior counsel exhibiting her contemporaneous note of the appeal proceedings, where that note is the only evidence of the appeal court's judgment, and is not contested by the other party: see *Saunders v Adderley* [1999] 1 WLR 884, 142 Sol Jo LB 220, PC.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(iii) The Record/424. Documents excluded from the record.

424. Documents excluded from the record.

The registrar or other proper officer of the court appealed from, as well as the parties and their agents, must endeavour to exclude from the record¹ all documents (especially such as are merely formal) that are not relevant to the subject matter of the appeal, and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the repetition of documents and headings and other merely formal parts of documents; but the documents excluded must be enumerated in a list to be transmitted with the record².

Where one party objects to the inclusion of a document in the record on the ground that it is unnecessary or irrelevant, and the other party insists on its being included, the record as finally printed must, with a view to the subsequent adjustment of the costs of and incidental to that document, indicate, in the index or elsewhere, the fact that, and the party by whom, the inclusion of the document was objected to³.

1 For the meaning of 'the record' see PARA 421 note 12 ante.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 17. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. See *Sonaton Pal v Galstaun* (1927) LR 54 Ind App 118, PC; *Practice Note* [1927] WN 37, PC. When the genuineness of a document is in doubt, the original or a photostat copy must be produced: *Practice Note* [1943] WN 234.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 18.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(iii) The Record/425. Registration of record.

425. Registration of record.

The record¹ must be registered in the Judicial Committee Registry as soon as it is received, with the date of arrival, the names of the parties, and the description 'reproduced' or 'not reproduced'². Appeals must be numbered consecutively in each year in the order in which the records are received in the registry³.

The parties are entitled to inspect the record and to extract all necessary particulars from it for the purpose of entering an appearance⁴.

- 1 For the meaning of 'the record' see PARA 421 note 12 ante.
- 2 Judicial Committee (General Appellate Jurisdiction) Rules r 19(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.
- 3 Ibid r 19(2).
- 4 Ibid r 20. As to the entry of appearance see PARAS 426, 435 post.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(iii) The Record/426. Entry of appearance by appellant.

426. Entry of appearance by appellant.

The appellant must enter an appearance¹ before he takes any step in the prosecution of the appeal and must give notice of entry of appearance to the respondent if he has entered an appearance². When the record³ arrives in England not having been reproduced, the appellant must within two months from the date of its arrival, or in a case where the record produced at the hearing of a petition for special leave has been accepted as the record proper for the appeal, within one month from the date of the order granting special leave, enter an appearance and bespeak a copy of the record, or of such parts of it as it may be necessary to have copied⁴.

- 1 For forms of entry of appearance by the appellant or by the respondent, and notice of entry of appearance, see Court Forms. As to appearance by the respondent see PARA 435 post.
- 2 Judicial Committee (General Appellate Jurisdiction) Rules r 21. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. As to the amendment of appearance on a change of agent see PARA 468 post.
- 3 For the meaning of 'the record' see PARA 421 note 12 ante.
- 4 Judicial Committee (General Appellate Jurisdiction) Rules r 22.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(iii) The Record/427. Reproduction of the record.

427. Reproduction of the record.

As soon as the appellant has entered an appearance¹ and obtained the copy of the record², he must arrange the documents in a suitable order, check the index, insert marginal notes, and generally do all that is necessary to prepare the copy for reproduction³. If the respondent has entered an appearance⁴, the appellant must send the copy as prepared for reproduction to the respondent for approval⁵. If the parties cannot agree the matter is to be referred to the Registrar of the Privy Council, who may require the parties to attend before the Judicial Committee⁶.

As soon as the parties have agreed the record, the appellant must lodge it in the Judicial Committee Registry for reproduction by a person or firm selected by the Registrar of the Privy Council, and at the same time he must lodge the estimated cost of reproducing the record⁷. In practice, however, with the leave of the registrar the appellant's agent often makes his own arrangements for reproduction.

1 As to appearance by the appellant see PARA 426 ante.

2 For the meaning of 'the record' see PARA 421 note 12 ante.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 23(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

4 As to appearance by the respondent see PARA 435 post.

5 Judicial Committee (General Appellate Jurisdiction) Rules r 23(2).

6 Ibid r 23(3).

7 Ibid r 24. As to preparing copy for the printer see r 12(2), Sch A.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(iii) The Record/428. Proofs and reproduction costs.

428. Proofs and reproduction costs.

As soon as the proofs of the record¹ are ready, the Registrar of the Privy Council must give notice to all parties who have entered an appearance², requesting them to attend at the Judicial Committee Registry to examine the proofs and compare them with the certified record, and the registrar must furnish each party with a proof for that purpose³. After the examination the appellant must, without delay, lodge his proof, duly corrected and, so far as necessary, approved by the respondent, and the registrar must cause at least 30 copies of the record to be struck off from this proof⁴. Each party who has entered an appearance is entitled to receive for his own use five copies of the record⁵.

Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the reproduction of the record form part of the costs of the appeal⁶, but where a document has been objected to by either party⁷ and on taxation the document is found to be unnecessary or irrelevant, the costs of reproducing it are disallowed to or borne by the party insisting on its inclusion⁸.

1 For the meaning of 'the record' see PARA 421 note 12 ante.

2 As to appearance by the appellant see PARA 426 ante; and as to appearance by the respondent see PARA 435 post.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 26(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

4 Ibid r 26(2).

5 Ibid r 27.

6 Ibid r 28(1).

7 See PARA 424 ante.

8 Judicial Committee (General Appellate Jurisdiction) Rules r 28(2); and see *Lim Siew Neo v Pang Keah Swee* [1958] 1 All ER 313n, [1958] 1 WLR 39, PC. As to taxation of costs see PARA 463 post.

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(iii) The Record/429. Lodging petition of appeal.

429. Lodging petition of appeal.

Where the record¹ arrives in the Judicial Committee Registry having been reproduced, the appellant must lodge his petition of appeal within two months of its arrival². Where the record arrives in the registry not having been reproduced, he must lodge his petition of appeal within one month of the completion of reproduction of the record, or if a record produced at the hearing of a petition for special leave has been accepted as the record proper for the appeal³, within 14 days of the completion of reproduction of the record⁴. If in the opinion of the Registrar of the Privy Council there are special reasons making it desirable for the appellant to do so, the appellant may lodge his petition of appeal prior to the arrival of the record or the completion of its reproduction⁵.

The petition of appeal⁶ must recite succinctly and, as far as possible, in chronological order the principal steps in the proceedings from their commencement down to the admission of the appeal, but must not contain argumentative matter or travel into the merits of the case⁷.

After lodging his petition of appeal the appellant must serve a copy of it, indorsed with the date of lodgment, on the respondent, as soon as the latter has entered an appearance⁸.

1 For the meaning of 'the record' see PARA 421 note 12 ante.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 29(a). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

3 Ie in a case to which *ibid* r 6(3) applies: see PARA 421 the text and note 14 ante.

4 *Ibid* r 29(b).

5 *Ibid* r 29 proviso.

6 As to the mode of addressing petitions see PARA 438 post; for a precedent see Court Forms.

7 Judicial Committee (General Appellate Jurisdiction) Rules r 30(b), (c). The petition must be in the form prescribed by r 47 (see PARA 438 post); r 30(a).

8 Ibid r 31. As to appearance by the respondent see PARA 435 post.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

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SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

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430. Special case.

When it is found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the parties, with the sanction of the Registrar of the Privy Council, may submit that question to the Judicial Committee in the form of a special case, and reproduce such parts only of the record¹ as may be necessary to enable the question to be argued², but if the Judicial Committee thinks fit it may order full argument of the case³.

1 For the meaning of 'the record' see PARA 421 note 12 ante.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 25(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

3 Ibid r 25(2).

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (iv) Withdrawal or Non-prosecution of Appeal/431. Withdrawal of appeal.

(iv) Withdrawal or Non-prosecution of Appeal

431. Withdrawal of appeal.

An appellant who has not lodged his petition of appeal may withdraw his appeal by giving notice in writing to the Registrar of the Privy Council, who must with all convenient speed by letter notify the registrar or other proper officer of the court appealed from that the appeal has been withdrawn¹. The appeal thereupon stands dismissed without further order². Where an appeal has been dismissed in this way a respondent who has entered an appearance before the dismissal may apply to the Judicial Committee for an order for costs³.

When an appellant who has lodged his petition of appeal desires to withdraw his appeal, he must present a petition to that effect⁴. On the hearing of this petition a respondent who has entered an appearance⁵ may, subject to any agreement between him and the appellant, apply to the Judicial Committee for his costs⁶. Where, however, the respondent has not entered an appearance or, if he has entered an appearance, consents in writing to the prayer of the petition, the Judicial Committee may, if it thinks fit, dispose of it as a consent petition⁷.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 32(1), (2). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Ibid r 32(2).

3 Ibid r 37(2).

4 Ibid r 33(1). For a form of petition for leave to withdraw an appeal see Court Forms.

5 As to appearance by the respondent see PARA 435 post.

6 Judicial Committee (General Appellate Jurisdiction) Rules r 33(2).

7 Ibid r 56. As to consent petitions see PARA 444 post. Where one of the parties to an appeal is under disability it is necessary to show that the withdrawal is for his benefit: *Gobinda Chandra Pal v Kailash Chandra Pal* (1921) LR 48 Ind App 241, PC; *Sakinbai v Shrinibai* (1919) LR 47 Ind App 88, PC.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (iv) Withdrawal or Non-prosecution of Appeal/432. Non-prosecution of appeal.

432. Non-prosecution of appeal.

Where an appellant takes no step in prosecution of his appeal within two months from the date of the arrival of the record¹ in England or, in a case where a record produced at the hearing of a petition for special leave to appeal has been accepted as the record proper for the appeal², within one month from the date of the order granting special leave to appeal, the Registrar of the Privy Council must, with all convenient speed, notify by letter the registrar or other proper officer of the court appealed from that the appeal has not been prosecuted and the appeal thereupon stands dismissed for non-prosecution without further order³. A copy of the letter must be sent by the Registrar of the Privy Council to any respondent who has entered an appearance in the appeal⁴.

Where an appellant who has entered an appearance fails to proceed with due diligence to take all further steps necessary to complete the reproduction of the record, or fails to lodge his petition of appeal within the prescribed period⁵, the Registrar of the Privy Council must call upon him to explain his default⁶. If no explanation is offered, or the explanation is in the registrar's opinion insufficient, the registrar must, with all convenient speed, notify by letter the registrar of the court appealed from that the appeal has not been effectively prosecuted and the appeal thereupon stands dismissed for non-prosecution⁷. The Registrar of the Privy Council must send a copy of the letter to all parties who have entered an appearance⁸.

Where an appeal has been dismissed in either of the ways described in this paragraph, a respondent who has entered an appearance before the dismissal may apply to the Judicial Committee for an order for costs⁹.

1 For the meaning of 'the record' see PARA 421 note 12 ante.

2 In a case to which the Judicial Committee (General Appellate Jurisdiction) Rules r 6(3) applies: see PARA 421 the text and note 14 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

3 Ibid r 34(1). As to restoration after dismissal see PARA 434 post.

4 Ibid r 34(2). As to appearance by the respondent see PARA 435 post.

5 See PARA 429 ante.

6 Judicial Committee (General Appellate Jurisdiction) Rules r 35(1).

7 Ibid r 35(2).

8 Ibid r 35(3).

9 Ibid r 37(2).

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (iv) Withdrawal or Non-prosecution of Appeal/433. Summons to show cause.

433. Summons to show cause.

Where an appellant who has lodged his petition of appeal fails to prosecute his appeal with due diligence, the Registrar of the Privy Council must call upon him to explain his default¹. If no explanation is offered or the explanation is, in the registrar's opinion, insufficient, the registrar must issue a summons² calling on the appellant to show cause before the Judicial Committee, at a time named, why the appeal should not be dismissed for non-prosecution³. No such summons may be issued before the expiration of one year from the date of the arrival of the record in England⁴. If the respondent has entered an appearance⁵ the registrar must send him a copy of the summons, and he may be heard at the hearing and ask for costs and other relief⁶. After considering the matter the Judicial Committee may decide that the appeal ought to be dismissed for non-prosecution, or give such other directions as the justice of the case may require⁷.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 36(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 For a form of summons see Court Forms.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 36(2).

4 Ibid r 36(2) proviso. For the meaning of 'the record' see PARA 421 note 12 ante.

5 As to appearance by the respondent see PARA 435 post.

6 Judicial Committee (General Appellate Jurisdiction) Rules r 36(3).

7 Ibid r 36(4).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/ (iv) Withdrawal or Non-prosecution of Appeal/434. Restoration of appeal.

434. Restoration of appeal.

An appellant whose appeal has been dismissed for non-prosecution¹ may present a petition praying that his appeal may be restored².

¹ See PARAS 432-433 ante.

² Judicial Committee (General Appellate Jurisdiction) Rules r 37(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. For an example see *Hasham v Zenab* [1958] 3 All ER 719n, [1958] 1 WLR 1214, PC.

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(v) Appearance by Respondent/435. Entry of appearance by respondent.

(v) Appearance by Respondent

435. Entry of appearance by respondent.

The respondent may enter an appearance¹ at any time between the arrival of the record² and the hearing of the appeal but, unless the Judicial Committee otherwise directs, he must bear or be disallowed costs occasioned by any undue delay in entering his appearance³. Where there are two or more respondents, and only one or some of them enter an appearance, the appearance form must set out the names of those who appear⁴. Two or more respondents may, at their own risk as to costs, enter separate appearances in the same appeal⁵.

After entering an appearance the respondent must forthwith give notice of it to the appellant if the appellant has entered an appearance⁶.

1 For forms of entry of appearance and notice of entry of appearance see Court Forms. As to appearance by the appellant see PARA 426 ante. As to amendment of appearance on a change of agent see PARA 468 post.

2 For the meaning of 'the record' see PARA 421 note 12 ante.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 38. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

4 Ibid r 40.

5 Ibid r 41.

6 Ibid r 39.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(v) Appearance by Respondent/436. Default of appearance.

436. Default of appearance.

A respondent who has not entered an appearance¹ is not entitled to receive any notice relating to the appeal from the Registrar of the Privy Council, nor allowed to lodge a case².

Subject to any order of the Judicial Committee to the contrary, if a respondent fails to enter an appearance, and the registrar is satisfied³ that the non-appearing respondent has received notice, or is otherwise aware, that the appeal has been admitted and that the record⁴ has been dispatched to England, the appeal may be set down ex parte (without notice) as against him at any time after the expiration of two months from the date of the lodging of the petition of appeal⁵.

If it is shown to the satisfaction of the Registrar of the Privy Council by affidavit or otherwise that an appellant has made every reasonable endeavour to serve a non-appearing respondent with the required notices⁶, and has failed to effect service, or that it is not the intention of the respondent to enter an appearance, the appeal may, without further order and at the risk of the appellant, be proceeded with ex parte as against the non-appearing respondent⁷.

1 As to entry of appearance by the respondent see PARA 435 ante.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 42. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

3 I.e. by a certificate under *ibid* r 11(2) (see PARA 423 the text and note 4 ante) or otherwise: r 43(2).

4 For the meaning of 'the record' see PARA 421 note 12 ante.

5 Judicial Committee (General Appellate Jurisdiction) Rules r 43(1), (2). A party appealing ex parte may be ordered to pay costs if unsuccessful: *Mussumauth Anundmoyee Chowdhoorayan v Sheeb Chunder Roy* (1862) 9 Moo Ind App 287 at 306, PC; *O'Shanassy v Joachim* (1876) 1 App Cas 82, PC (respondents lodging case but not appearing on hearing).

6 I.e. the notices mentioned in the Judicial Committee (General Appellate Jurisdiction) Rules r 43(2): see the text and notes 4-5 supra.

7 *Ibid* r 43(3) proviso.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(v) Appearance by Respondent/437. Defence as a poor person.

437. Defence as a poor person.

A respondent who desires to defend an appeal as a poor person may present a petition to that effect, accompanied by an affidavit stating he is not worth £500 in the world excepting his wearing apparel and his interest in the subject matter of the appeal¹.

¹ Judicial Committee (General Appellate Jurisdiction) Rules r 44. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. As to appeals as a poor person see PARA 422 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/438. Petitions.

(vi) Petitions generally

438. Petitions.

Petitions for orders or directions as to practice and procedure arising after the lodging of the petition of appeal and not involving any change in the parties must be addressed to the Judicial Committee¹; subject to certain exceptions², all other petitions must be addressed to Her Majesty in Council, but a petition properly so addressed may include, as incidental to the relief sought, a prayer for orders or directions as to practice and procedure³.

Petitions must consist of consecutively numbered paragraphs and be indorsed with the name of the court appealed from, the full title and Privy Council number of the appeal, or the full title of the petition (as the case may be), and the name and address of the agent of the petitioner⁴, but need not⁵ be signed⁶. Unless the petition is a consent petition⁶ at least seven copies of it must be lodged⁸.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 45(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Petitions from the following countries which would otherwise be addressed to Her Majesty in Council should be addressed as follows: (1) from Brunei, to His Majesty the Sultan (Brunei (Appeals) Order 1989, SI 1989/2396, Sch 2); (2) from Dominica, Kiribati, Mauritius and Trinidad and Tobago, to the Judicial Committee of the Privy Council (Dominica Modification of Enactments Order 1978, SI 1978/1030, art 4(2) (dependent for its continued operation on the law of Dominica); Kiribati Appeals to Judicial Committee Order 1979, SI 1979/720, art 3(3); Mauritius Appeals to Judicial Committee Order 1992, SI 1992/1716, art 2(2); Trinidad and Tobago Appeals to Judicial Committee Order 1976, SI 1976/1915, art 2(2)).

3 Judicial Committee (General Appellate Jurisdiction) Rules r 45(2).

4 Ibid r 47(1). Rule 47 is applied, with the necessary changes, to petitions for special leave to appeal: see r 7; and PARA 421 ante.

5 le except as provided by ibid r 3: see PARA 421 ante.

6 Ibid r 47(2).

7 See PARA 445 post.

8 Judicial Committee (General Appellate Jurisdiction) Rules r 47(3); *Registrar's Practice Direction: Copies of Documents* (21 September 2000) PARA 2.

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

438 Petitions

NOTE 2--SI 1976/1915, SI 1979/720 partially revoked, SI 1989/2396 Sch 2 revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/439. Caveat.

439. Caveat.

Where a petition is expected to be lodged, or has been lodged, which does not relate to any pending appeal, any person claiming a right to appear before the Judicial Committee at the

hearing may lodge a caveat¹, and thereupon is entitled to receive from the Registrar of the Privy Council notice of the lodging of the petition (if not lodged at the time of the caveat) and from the petitioner, if and when the petition is lodged, a copy of the petition, and (at his own expense) copies of any papers lodged by the petitioner in support of his petition². The caveator must forthwith, after lodging his caveat, give notice of it to the petitioner, if the petition has been lodged³.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 48(1). Rule 48 is applied, with the necessary changes, to petitions for special leave to appeal: see r 7; and PARA 421 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. For a form of caveat and of notice of lodgment see Court Forms.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 48(2).

3 Ibid r 48(3).

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/440. Service of petition.

440. Service of petition.

A copy of any petition lodged in relation to any pending appeal must be served by the petitioner on every party who has entered an appearance¹. Any party so served is entitled to require the petitioner to furnish him, at his own expense, with copies of any papers lodged in support of the petition².

1 Judicial Committee (General Appellate Jurisdiction) Rules r 49(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. Rule 49 is applied, with the necessary changes, to petitions for special leave to appeal: see r 7; and PARA 421 ante. As to appearance by the appellant see PARA 426 ante; and as to appearance by the respondent see PARA 435 ante.

2 Ibid r 49(2).

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/441. Affidavit verifying petition.

441. Affidavit verifying petition.

A petition not relating to any pending appeal, and any other petition containing allegations of fact which cannot be verified by reference to the registered record¹ or any certificate or duly authenticated statement of the court appealed from, must be supported by an affidavit². Where the petitioner prosecutes his petition in person, the affidavit must be sworn by him, and must state that, to the best of his knowledge, information and belief, the allegations in the petition are true³. Where the petitioner is represented by an agent, the affidavit must be sworn by the agent, and, besides stating that, to the best of his knowledge, information and belief, the allegations in the petition are true, must show how he obtained his instructions and the information enabling him to present the petition⁴.

1 For the meaning of 'the record' see PARA 421 note 12 ante.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 50(1). Rule 50 is applied, with the necessary changes, to petitions for special leave to appeal: see r 7; and PARA 421 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. For a form of affidavit supporting a petition see Court Forms.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 50(2).

4 Ibid r 50(3).

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/442. Petition for revivor.

442. Petition for revivor.

In the case of the death or change of status of either of the parties, or a transmission of their interest, the suit abates, and an order of revivor must be obtained on petition¹. A petition² for an order of revivor or substitution must be accompanied by a certificate or duly authenticated statement from the court appealed from³, showing who, in the opinion of that court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status⁴.

In the case of joint appellants the appeal does not abate by reason of the death of one of them⁵. If a sole respondent dies, the appellant must apply for an order of revivor against the deceased's personal representatives⁶. Where there are numerous respondents whose interests do not conflict and delay is caused by the death of some of them, and the consequent substitution of revivor proceedings and further similar delay is apprehended, an order may be made for the appeal to be set down against such of the respondents as have appeared or been served with notice of any order bringing them on the record, and that all questions as to how any other respondents should be proceeded against should stand for determination, if necessary, at the hearing of the appeal⁷.

1 In *Hodge v Marsh* [1936] 1 All ER 848, PC, the Judicial Committee, having heard an appeal against the making of a decree absolute in a divorce suit in ignorance of the death of the respondent, held on learning of the death that its judgment, which had been reserved, could not be delivered, as the appeal, being one in a personal action, abated at the moment of the respondent's death.

2 For the manner of addressing a petition see PARA 438 notes 1-3 ante.

3 Other evidence than a certificate from the court appealed from has been accepted: *Ledgard v Bull* (1886) LR 13 Ind App 134, cited in *Practice Note* [1953] 1 WLR 1, PC.

4 Judicial Committee (General Appellate Jurisdiction) Rules r 51. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. See also *Hodge v Marsh* [1936] 1 All ER 848, PC; and note 1 supra.

5 *Marchioness of Bute v Mason* (1849) 7 Moo PCC 1.

6 *Gobind Chunder Sein v Ryan* (1861) 15 Moo PCC 230 at 247.

7 *Zahid Husain v Mohammad Ismail* (1929) LR 57 Ind App 94, PC.

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/443. Refusal to receive petition.

443. Refusal to receive petition.

The Registrar of the Privy Council may refuse to receive a petition on the ground that it discloses no reasonable cause of appeal, or is frivolous, or contains scandalous matter or fails to comply with the provisions of the rules setting out the form of a petition for special leave to appeal¹; but the petitioner may appeal, by way of motion, from the refusal to the Judicial Committee².

¹ le the provisions of the Judicial Committee (General Appellate Jurisdiction) Rules r 3: see PARA 421 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

² Ibid r 52. Rule 52 is applied, with the necessary changes, to petitions for special leave to appeal: r 7; and see PARA 421 note 10 ante. For an example see *Ogilvy v Minister of Legal Affairs* [2002] UKPC 7, [2002] All ER (D) 189 (Feb).

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

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444. Setting down petition.

As soon as a petition and all necessary documents are lodged the petition is deemed to be set down¹.

All petitions which have been set down are to be put in the list, unless the Judicial Committee otherwise directs, on each day appointed for the hearing of petitions². In the absence of special circumstances of urgency shown to the satisfaction of the Registrar of the Privy Council, no opposed petition is to be put in the list before the expiration of ten clear days from its lodgment unless the opponent consents to an earlier hearing³.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 53. Rules 53, 54 (see the text and notes 2-3 infra) are applied, with the necessary changes, to petitions for special leave to appeal: r 7; and see PARA 421 note 10 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Ibid r 54.

3 Ibid r 54 proviso.

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/445. Notice of hearing of petition.

445. Notice of hearing of petition.

When the Judicial Committee has appointed a day for the hearing of a petition, the Registrar of the Privy Council must notify all parties concerned¹. If the prayer of a petition is consented to in writing by the opponent, or the petition is of a formal or non-contentious character, the Judicial Committee may, if it thinks fit, report to Her Majesty², or make an order, as the case may be,

without requiring the attendance of the parties³. As soon as the Committee has done so, the registrar must notify the parties of the making, date, and nature of the report or order⁴.

On the hearing of a petition only one counsel is to be heard on each side⁵.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 55. Rules 55, 56, 59 (see the text and notes 2-5 infra) are applied, with the necessary changes, to petitions for special leave to appeal: r 7; and see PARA 421 note 10 ante.

2 On a petition from Brunei, any report would be to the Sultan of Brunei: see PARA 406 ante.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 56(1).

4 Ibid r 56(2).

5 Ibid r 59. Cf the position at the hearing of an appeal: see r 72; and PARA 454 post.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vi) Petitions generally/446. Withdrawal of petition.

446. Withdrawal of petition.

A petitioner who desires to withdraw his petition must give notice in writing to the Registrar of the Privy Council¹. Where the petition is opposed the opponent is, subject to any agreement between the parties, entitled to apply to the Judicial Committee for his costs².

1 Judicial Committee (General Appellate Jurisdiction) Rules r 57(1). Rule 57 is applied, with the necessary changes, to petitions for special leave to appeal: r 7; and see PARA 421 note 10 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Ibid r 57(2).

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401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

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447. Delay.

Where a petitioner unduly delays bringing his petition to a hearing, the Registrar of the Privy Council must call upon him to explain the delay¹. If no explanation is offered or an explanation is offered which, in the registrar's opinion, is insufficient, the registrar may, after notifying all interested parties of his intention to do so, list the petition for hearing on the next following day appointed for the hearing of petitions for such directions as the Judicial Committee may think fit².

1 Judicial Committee (General Appellate Jurisdiction) Rules r 58(1). Rule 58 is applied, with the necessary changes, to petitions for special leave to appeal: r 7; and see PARA 421 note 10 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Ibid r 58(2).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vii) The Case/448. Lodgment of case.

(vii) The Case

448. Lodgment of case.

No party to an appeal is entitled to be heard by the Judicial Committee unless he has previously lodged his case¹. Where, however, a respondent who has entered an appearance² does not desire to lodge a case, he may give the Registrar of the Privy Council notice in writing of his intention not to do so, while reserving his right to address the Judicial Committee on the question of costs³.

The case must be reproduced in the prescribed manner⁴ and must be signed by at least one of the counsel who attends the hearing of the appeal, or by the party if he appears in person⁵. Each party must lodge 20 copies of his case⁶.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 60. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 As to entry of appearance by the respondent see PARA 435 ante.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 60 proviso.

4 In the manner prescribed by *ibid* Sch A r 1: r 61. The case must be reproduced on A4 ISO paper, with each page numbered; the number of lines on each page of type must be 47 or thereabouts, and every tenth line must be numbered in the margin: Sch A r 1.

5 *Ibid* r 61; and see *Montreal Light, Heat and Power Co v Montreal City* (1924) 68 Sol Jo 419, PC.

6 Judicial Committee (General Appellate Jurisdiction) Rules r 62.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vii) The Case/449. Form of case.

449. Form of case.

The case must consist of paragraphs numbered consecutively and must state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case, and the reasons of appeal¹. As far as practicable, references by page and line to the relevant portions of the record must be reproduced in the margin, and long extracts from the record must not be reproduced in the case². In taxing the costs the taxing officer, either of his own motion or at the instance of the opposite party, may inquire into any unnecessary prolixity in the case, and disallow the costs occasioned by it³. Two or more respondents may, at their own risk as to costs, lodge separate cases in the same appeal⁴.

After lodging his case each party must forthwith give notice of lodgment to the other party⁵.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 63(1)(a), (b). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. The Judicial Committee attaches considerable importance to the cases and expects to have them prepared in accordance with the rules so as to give their lordships the necessary assistance: *Practice Note* [1939] WN 135, PC. For forms of case see Court Forms.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 63(1)(c), (d).

3 Ibid r 63(2).

4 Ibid r 64.

5 Ibid r 65. For a form of notice see Court Forms.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vii) The Case/450. Case notice.

450. Case notice.

The party who lodges his case first may, at any time after the expiration of three clear days after giving the other party notice of the lodgment of his case¹, serve the other party with a 'case notice' requiring him to lodge his case within one month from service of the case notice². If the other party fails to comply with the case notice, the party who served the case notice may, at any time after the expiration of the time limited by the case notice, lodge an affidavit of service setting out the terms of the case notice, and the appeal, if all other conditions for being set down are satisfied, is then to be set down ex parte (without notice) as against the party in default³. No case notice, however, may be served until after the completion of the reproduction of the record⁴. The party in default is not precluded from lodging his case, at his own risk as regards costs and otherwise, at any time up to the date of hearing⁵.

1 See PARA 449 ante.

2 Judicial Committee (General Appellate Jurisdiction) Rules r 66(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. For a form of case notice and an affidavit of service see Court Forms.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 66(2).

4 Ibid r 66(1) proviso. As to reproduction of the record see PARA 423 ante; and for the meaning of 'the record' see PARA 421 note 12 ante.

5 Ibid r 66(3).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(vii) The Case/451. Setting down the appeal.

451. Setting down the appeal.

Subject to the rules as to procedure on non-appearance of the respondent¹ and as to case notices², an appeal is set down as soon as the cases on both sides are lodged³, and the parties thereupon must exchange cases by handing one another five copies of their respective cases⁴.

As soon as the appeal is set down the appellant must obtain from the Judicial Committee Registry seven copies of the record⁵ and cases to be bound in the prescribed manner⁶ for the use of the Judicial Committee⁷. The several documents, indicated by incuts, must be arranged in the following order: (1) appellant's case; (2) respondent's case; (3) record; (4) supplemental record, if any⁸. The appellant must lodge the bound copies at the earliest possible date⁹.

1 le subject to the Judicial Committee (General Appellate Jurisdiction) Rules r 43: see PARA 436 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 le subject to *ibid* r 66: see PARA 450 ante.

3 *Ibid* r 67(1).

4 *Ibid* r 67(2). Counsel should make up his case subject to receiving afterwards the case of the other party: *Practice Note* [1944] WN 178, PC.

5 For the meaning of 'the record' see PARA 421 note 12 ante.

6 The copies must be bound with plastic comb binding in limp cornflower blue covers of fibre board substance: Judicial Committee (General Appellate Jurisdiction) Rules r 68(2). The front cover must state the title and Privy Council number of the appeal, the contents of the volume, and the names and addresses of the agents: r 68(3).

7 *Ibid* r 68(1).

8 *Ibid* r 68(4).

9 *Ibid* r 68(1).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/452. Authorities and skeleton arguments.

(viii) The Hearing

452. Authorities and skeleton arguments.

A total of eight sets of each sides' authorities are required, at least two of which must be lodged at the Judicial Committee Registry before the end of the second week before the hearing of an appeal¹.

There is no rule requiring the lodging of skeleton arguments, but eight copies will be required of any skeleton argument that is lodged².

1 *Registrar's Practice Direction: Copies of Documents* (21 September 2000) PARA 7(a). The Judicial Committee (General Appellate Jurisdiction) Rules only require that each party lodges a written list of authorities to be cited at the hearing not less than 3 clear days before the hearing of an appeal: see r 69. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 *Registrar's Practice Direction: Copies of Documents* (21 September 2000) PARA 7(b).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/453. Day of hearing.

453. Day of hearing.

The Registrar of the Privy Council must name a day on or before which appeals must be set down if they are to be entered in the list of business for the ensuing sittings¹. The registrar must, at the earliest possible date, notify every party to an appeal who has entered an appearance² of the day appointed for the hearing of the appeal, and the parties must be in readiness on that day³.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 70. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 As to appearance by the appellant see PARA 426 ante; and as to appearance by the respondent see PARA 435 ante.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 71.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/454. Hearing, reargument and rehearing.

454. Hearing, reargument and rehearing.

The hearing is at the Bar of the Privy Council. Subject to the approval of the Lord Chancellor¹ and the President of the Council, the Judicial Committee may sit in more than one division at the same time, in which case anything which may be done to, by or before the Committee may be done to, by or before any such division². The appellant's counsel begins and has a right of reply³. At the hearing of an appeal not more than two counsel will be heard on a side⁴. Several parties in an appeal who have different interests are heard by separate counsel, but if the interests are the same they must be heard by the same counsel⁵. Persons interested may intervene⁶, but not when an appeal is part heard⁷.

Where legal points of importance arise, especially if the Committee which heard the appeal disagrees or entertains doubts, the Committee may hear and, if necessary, direct further argument, in which case one counsel only may be heard on each side⁸. Reargument may also be necessary if one of the judges who heard the appeal dies before judgment⁹.

The Committee may adjourn the hearing of an appeal or part of an appeal¹⁰. A rehearing of an appeal may be allowed, but only in exceptional circumstances, when, by some accident or fraud, the party petitioning for the rehearing, without any fault of his own, has not been heard, and an order has been made as if he had been heard¹¹.

The Committee does not act on the strict rule that it is bound by previous decisions¹². It will not necessarily follow a decision of the House of Lords where the question is in a sphere of the law where its policy calls for decision and where this policy is fashioned largely by judicial opinion in the local courts¹³.

¹ As to the Lord Chancellor see PARA 501 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

² Judicial Committee Act 1915 s 1(1). Such approval was most recently given in May 1999.

³ *Logan v Burslem* (1842) 4 Moo PCC 284 at 292.

4 Judicial Committee (General Appellate Jurisdiction) Rules r 72. Cf the position on the hearing of a petition: see r 59; and PARA 445 ante..

5 *Re Downie, Re Arrindell* (1841) 3 Moo PCC 414 at 419; *Jewa-Jee v Trimbuk-Jee* (1842) 3 Moo Ind App 138, PC.

6 *Lewis v A-G of Jamaica* [2001] 2 AC 50, [2000] 5 LRC 253, PC. See also *Maharajah Ishuree Persad Narain Sing v Lal Chutterput Sing* (1842) 3 Moo Ind App 100 at 109, PC; *East India Co v Robertson* (1859) 7 Moo Ind App 361, PC.

7 *La Banque d'Hochelaga v Murray* (1890) 15 App Cas 414 at 419, PC.

8 *Ruckmoboye v Lulloobhoy Mottichund* (1852) 8 Moo PCC 4 at 11.

9 This was the case in *Falkingham v Victorian Rlys Comr* (1900) 82 LT 506 at 507, PC. As to the death of a judge see generally para 325 ante.

10 *Auger v Beaudry* [1920] AC 1010 at 1013, PC, per Lord Buckmaster.

11 *Ram Narayan Singh v Adhindra Nath Mukerji* [1917] AC 100, PC; *Venkata Narasimha Appa Row v Court of Wards* (1886) 11 App Cas 660, PC; *Re Transferred Civil Servants (Ireland) Compensation* [1929] AC 242, PC; *Rajundernarain Rae v Bijai Govind Sing* (1836) 1 Moo PCC 117, PC.

12 *Nkambule v R* [1950] AC 379 at 397, PC. The Committee declined to follow a previous decision in *Schaefer v Schuhmann* [1972] AC 572, [1972] 1 All ER 621, PC and in *Lewis v A-G of Jamaica* [2001] 2 AC 50, [2000] 5 LRC 253, PC. A decision on a given state of facts, however, ought to be reopened only with the greatest hesitation: *Read v Bishop of Lincoln* [1892] AC 644, PC; and see CIVIL PROCEDURE vol 11 (2009) PARA 103.

13 *Lange v Atkinson* (28 October 1999, unreported, PC); *Australian Consolidated Press Ltd v Uren* [1969] 1 AC 590, [1967] 3 All ER 523, PC; see, however, *Robins v National Trust Co* [1927] AC 515 at 519, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

421-454 Petition for leave ... Hearing, reargument and rehearing

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

454 Hearing, reargument and rehearing

TEXT AND NOTE 2--In 1915 Act s 1(1) for 'Lord Chancellor' read 'President of the Supreme Court of the United Kingdom': Constitutional Reform Act 2005 Sch 4 para 18 (not yet in force). In 1915 Act s 1(1) reference to the Lord President of the Council omitted: 2005 Act Sch 16 para 10, Sch 18 Pt 6 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/455. New points.

455. New points.

The Judicial Committee is very unwilling to entertain any point not duly raised and considered in the court below¹, and only in very exceptional circumstances can an issue dropped in an intermediate court of appeal be revived on appeal to the Committee². The Committee is also loth to interfere with the discretion of a lower appellate court which has refused to entertain a point not raised and considered at first instance, especially where the trial was before a jury³. Where the ground on which special leave to appeal was given fails, the Committee will not consider a second ground where it is not one on which an appeal would be entertained⁴. On an appeal to the Committee from the prize court, captors will not be allowed to succeed by raising on the facts a case which was not presented in the prize court⁵. Where a point is raised for the first time before the Committee the successful party raising it may be deprived of costs⁶. Speculative opinions will not be given on hypothetical questions⁷.

However when a question is raised for the first time on the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent, but expedient in the interests of justice, to entertain the plea⁸; and if the point is patent on the face of the record, the Committee will deal with it even though it was not taken in the court below⁹.

1 *Grey v Manitoba and North Western Rly Co of Canada* [1897] AC 254, PC; *White v Victoria Lumber and Manufacturing Co Ltd* [1910] AC 606, PC; *Vancouver City v Vancouver Lumber Co* [1911] AC 711, PC. See also *Raja Ramnad v Sundara Pandiyasami Tevar* (1918) LR 46 Ind App 64, PC; *Ghanshayam Das Jagnani v Ramnarayan Ganeshnarayan* (1935) 53 RPC 160, PC; *Groat v Hydro-Electric Power Commission of Ontario* (1929) 47 RPC 1 at 14, PC, per Lord Buckmaster; *United Kingdom Tobacco Co (1929) Ltd v Malayan Tobacco Distributors Ltd* (1933) 51 RPC 11, PC; *United Marketing Co v Hasham Kara* [1963] 2 All ER 553, [1963] 1 WLR 523, PC; *Liew Sai Wah v Public Prosecutor* [1969] 1 AC 295, [1968] 2 All ER 738, PC; *Pillai v Comptroller of Income Tax* [1970] AC 1124, PC; *Kabaka's Government v A-G of Uganda* [1966] AC 1, PC; *Kunjo s/o Ramalan v Public Prosecutor* [1979] AC 135 at 142, [1978] 1 All ER 1209 at 1213, PC; *Take Harvest Ltd v Liu* [1993] AC 552 at 571-572, [1993] 2 All ER 459 at 473, PC.

2 *Ahamath v Sariffa Umma* [1931] AC 799, PC.

3 *Perkowski v Wellington Corp'n* [1959] AC 53, [1958] 3 All ER 368, PC.

4 *A-G for Ontario v Daly* [1924] AC 1011, PC.

5 *The Kronprinzessin Victoria* [1919] AC 261, PC.

6 *Benaim & Co v Debono* [1924] AC 514 at 521, PC. Where proceedings had been based on a repealed ordinance, the Committee dealt with the appeal without prejudice to further proceedings based on the substituted legislation: *Cheesebrough Manufacturing Co v Kudhoos* (1929) 46 TLR 95, PC.

7 *A-G for Ontario v Hamilton Street Rly* [1903] AC 524, PC; *A-G for Ontario v A-G for Canada* [1916] 1 AC 598, PC.

8 *Connecticut Fire Insurance Co v Kavanagh* [1892] AC 473 at 480, PC; *The Kim (No 4)* (1921) 90 LJP 188, PC; *Official Liquidator of ME Moolla Sons Ltd v Burjorjee* (1932) 48 TLR 279, PC.

9 *Devine v Holloway* (1861) 14 Moo PCC 290 at 298.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/456. Appeals in criminal cases.

456. Appeals in criminal cases.

The Judicial Committee does not sit as a court of criminal appeal¹. It will not review or interfere with the course of criminal proceedings unless it is shown that, by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done². A mere misdirection on the part of the court below, as for example in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character³. The dominant question is the broad one as to whether substantial injustice has been done³, and it is for the appellant to satisfy the Committee that a real miscarriage of justice has occurred⁴. An appeal may be allowed where the appellant has been deprived of the substance of a fair trial⁵. The same principles on which the Committee acted when advising on the review of colonial courts are applied against the constitutional background of an appeal from an independent sovereign state in the Commonwealth⁶. An appeal will be allowed where a civil wrong has been treated as a crime⁷.

1 *Practice Note* (1932) 48 TLR 300, PC; and see eg *Gayle v R* (1996) 48 WIR 287 at 289, PC.

2 *Re Dillet* (1887) 12 App Cas 459, PC; *DPP v Walker* [1974] 1 WLR 1090, PC. In recent cases the Judicial Committee has considered whether the mandatory death penalty in certain Commonwealth states is unconstitutional: see eg *Reyes v R* [2002] UKPC 11, [2002] All ER (D) 149 (Mar). See also cases on granting special leave in criminal cases cited in para 420 ante.

3 *Dal Singh v R* (1917) LR 44 Ind App 137, PC; and for a recent case see eg *Yearwood v R* [2001] 5 LRC 247, [2001] All ER (D) 303, PC.

4 *Karaolides v R* (13 April 1956, unreported), PC. Where a plea of 'lawful excuse' ought to have been left to the assessors by the judge and, if that had been done, the appellant might have been acquitted, the Committee allowed the appeal: *Wong Poo Yin v Public Prosecutor* [1955] AC 93, [1954] 3 All ER 31, PC. Where at his trial for rape an appellant had been deprived of the protection of the rule as to the desirability of corroboration and there had been a miscarriage of justice, the Committee allowed the appeal: *Chiu Nang Hong v Public Prosecutor* [1964] 1 WLR 1279, PC. Where the Committee found that there was a misdirection by the trial judge on provocation but that this could not have caused a miscarriage of justice the appeal was dismissed: *Lee Chun-Chuen v R* [1963] AC 220, [1963] 1 All ER 73, PC.

5 See *Broadhurst v R* [1964] AC 441, [1964] 1 All ER 111, PC; *Seneviratne v R* [1936] 3 All ER 36, PC.

6 *Lim Yam Tek v Public Prosecutor* [1972] 2 MLJ 41, PC.

7 *Toronto Rly v R* [1917] AC 630, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

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457. Interfering with findings of fact and procedural decisions.

In the absence of very definite and explicit grounds the Judicial Committee will not interfere with findings of fact in which the courts below concur¹, from whatever court of the Commonwealth the appeal is made², and where knowledge of local conditions is needed to assess the amount of recompense awarded, the assessment of the court below will not normally be overruled³. In dealing with evidence from the court below or questions as to inferences to be drawn from that evidence, the Committee, as a general rule, considers that the court below before whom the witnesses appeared is a better judge than itself⁴, and the conclusion of a jury on matters of fact should be upheld even though different from that which the judges of a court of appeal might have reached⁵.

The Committee is unwilling to reverse the decision of a local court on a question of procedure⁶ and, in default of evidence to the contrary, will accept the decision of a local court as to what terms are proper in a particular case⁷. The Committee is also reluctant to interfere with the discretion of the court below unless it appears that there has been an obvious misuse of the discretionary power⁸ or that the question involved is one of real public significance and it is satisfied that the exercise of the discretion has effected a substantial injustice⁹. Similarly the Committee is reluctant to interfere with the local court's assessment of the importance of abstaining from altering the law from what it has previously been understood to be¹⁰; but it will do so where English law is applicable¹¹ or where the wording and legislative history of the enactment in question are the same as its English equivalent¹².

1 *Vatcher v Paull* [1915] AC 372, PC. See also *St Francis Hydro Electric Co v R* [1937] 2 All ER 541, PC; and *Yachuk v Oliver Blais Co Ltd* [1949] AC 386, [1949] 2 All ER 150, PC.

2 *Robins v National Trust Co* [1927] AC 515, PC; *Bal Krishna v Ram Krishna* (1931) LR 58 Ind App 220, PC. See also *New York State v Phillips' Heirs* [1939] 3 All ER 952, PC, directly following *Robins v National Trust Co* supra. For propositions as to the present practice and cases justifying departure from the rule see *Srimati Bibhabati Devi v Kumar Ramendra Narayan Roy* [1946] AC 508, PC. The fact that there was a dissentient in the Court of Appeal below does not matter: *Srimati Bibhabati Devi v Kumar Ramendra Narayan Roy* supra; *Chua Chee Chor v Chua Kim Yong* [1963] 1 All ER 102 at 104-105, [1962] 1 WLR 1464 at 1468, PC.

3 *West India Electric Co v Roberts* [1920] AC 1025 at 1028, PC; *Selvanayagam v University of West Indies* [1983] 1 All ER 824, [1983] 1 WLR 585, PC; but cf *Lai Wee Lian v Singapore Bus Ltd* [1984] 1 AC 729, [1984] 3 WLR 63, PC, where the Judicial Committee substituted its own figure for damages. See also *W v W, J v Bell* [1999] 4 LRC 260, PC.

4 *Archambault v Archambault* [1902] AC 575, PC; *Whitney v Joyce* (1906) 75 LJPC 89, PC; *Tshingumuzi v A-G of Natal* [1908] AC 248 at 250, PC; *Baldwin v Baldwin* (1922) 91 LJPC 208; *Official Liquidator of ME Moolla Sons Ltd v Burjorjee* (1932) 48 TLR 279, PC. Concurrent findings of facts in courts below will not be normally reversed: *Vatcher v Paull* [1915] AC 372, PC; *Robins v National Trust Co* [1927] AC 515, PC; *Groat v Hydro-Electric Power Commission of Ontario* (1929) 47 RPC 1, PC. Questions whether in taking the accounts of a partnership certain items should or should not be allowed on one side or the other are questions of fact, and if

no matter of principle is involved ought not to be made the subject of an appeal: *Practice Point* [1942] WN 145, PC.

5 *Toronto Rly Co v King* [1908] AC 260 at 270, PC; cf *Railways Comr v Brown* (1887) 13 App Cas 133 at 134, PC; *Phillips v Martin* (1890) 15 App Cas 193 at 194, PC; *Cox v English, Scottish and Australian Bank* [1905] AC 168 at 170, PC. A plea as to jurisdiction will be heard at any time: *Chief Kwame Asante v Chief Kwame Tawia* [1949] WN 40. A proposed compromise affecting a minor should first be submitted to the court below and that court should certify to the Committee its approval or disapproval: *Shaikh Shukrullah v Musammat Zohra Bibi* [1936] 3 All ER 1011, PC.

6 *Montreal Corp v Brown and Spingle* (1876) 2 App Cas 168, PC; *A-G for Ontario v Daly* [1924] AC 1011, PC; *Ratnam v Cumarasamy* [1964] 3 All ER 933, [1965] 1 WLR 8, PC.

7 *Sunder Mull v Satya Kinder Sahana* (1927) LR 55 Ind App 85, PC.

8 *Odlum v Vancouver City* (1915) 85 LJPC 95.

9 *Short v A-G of Sierra Leone* [1963] 1 WLR 1427, PC; see also *Baldwin v Baldwin* (1922) 91 LJPC 208.

10 *Geelong Harbor Trust Comrs v Gibbs Bright & Co (a firm)* [1974] AC 810, PC.

11 *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] AC 80, [1985] 2 All ER 947, PC.

12 *de Lasala v de Lasala* [1980] AC 546, [1979] 2 All ER 1146, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/458. Questions not admitting of appeal.

458. Questions not admitting of appeal.

The Judicial Committee is a judicial tribunal and will not admit appeals from an authority exercising executive authority only, as in the case of the grant of sanction to a petition of right¹, or as in that of martial law tribunals². Likewise a petition for special leave to appeal from the opinion of a Court of Appeal on a reference by the Governor General for advice on the exercise of the prerogative of mercy was dismissed because the opinion was not binding on the Governor General, did not impinge on any legal right of the defendant and fell outside the terms of the legislation governing the right of appeal to the Privy Council³.

1 *Lovibond v Governor-General of Canada* [1930] AC 717, PC. The Crown Proceedings Act 1947, which largely abolished in England and Wales the procedure by petition of right (see CROWN PROCEEDINGS AND CROWN PRACTICE), does not affect the law enforced in courts elsewhere than in England and Wales or Scotland, or the procedure in those courts: s 52.

2 *Ex p Marais* [1902] AC 109, PC; *Tilonko v A-G of Natal* [1907] AC 93, 461, PC; *Ex p Mgomini* (1906) 94 LT 558.

3 *Thomas v R* [1980] AC 125, [1979] 2 All ER 142, PC; but this authority must now be read subject to *Lewis v A-G of Jamaica* [2001] 2 AC 50, [2000] 5 LRC 253, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/459. Evidence.

459. Evidence.

The Judicial Committee has power to take evidence¹, although the power is rarely used in appeals from Commonwealth courts. Evidence is usually by affidavit², but may be given orally. If a party wishes to tender fresh evidence an application to the Committee by petition for leave to adduce the evidence must be made and the granting of the application lies at the discretion of the Committee. That discretion will, however, be exercised in accordance with established principles, namely that the fresh evidence may not be adduced unless it was not available to the party seeking to use it in the court appealed from, reasonable diligence would not have made it so available, and, if true, the fresh evidence would have had or would have been likely to have had a determining influence on the court appealed from³.

1 See the Judicial Committee Act 1833 s 7 (evidence by word of mouth or on written depositions), s 8 (re-examination of witnesses) (both amended by the Statute Law Revision (No 2) Act 1888).

2 The practice of the Committee is, where necessary, to accept an official translation of a document: *Rajendra Prasad Bose v Gopal Prasad Sen* (1930) LR 57 Ind App 296, PC.

3 *Shedden v Patrick and A-G* (1869) LR 1 Sc & Div 470; *Leeder v Ellis* [1953] AC 52, [1952] 2 All ER 814, PC; *Corbett v Corbett* [1953] 2 All ER 69, CA; *Andrew v Andrew* [1953] 1 WLR 1453, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/460. References to registrar etc.

460. References to registrar etc.

The Judicial Committee has power to refer any matters to be examined and reported on to the Registrar of the Privy Council or to such other person or persons as may be appointed by Her Majesty in Council or by the Judicial Committee, in the same manner as matters are referred in the Chancery Division to a master¹.

¹ Judicial Committee Act 1833 s 17 (amended by the Statute Law Revision (No 2) Act 1888). The order may be made despite the respondent's objection: *Hutchinson v Gillespie* (1838) 2 Moo PCC 243. As to Chancery masters see PARA 655 post.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(viii) The Hearing/461. Judgment.

461. Judgment.

After hearing an appeal the Judicial Committee usually reserves its judgment, in which case the Registrar of the Privy Council must, in due course, notify the parties of the day appointed for the delivery of judgment¹. At the delivery of judgment the result of the appeal is announced in open court; the reasons are not read in full but printed copies are distributed to the parties and to any other person who so requests².

If the appeal was to Her Majesty in Council the judgment is in the form of a report to Her Majesty, advising her as to the appeal³. The Committee's report as to the result of the appeal is submitted to Her Majesty at the next Council and when approved is embodied in an Order in Council⁴ and then becomes the final decree⁵. Only one judgment is given unless a member of the Committee dissents from the opinion of the majority as to the nature of the report to be made to Her Majesty, in which case he may publish his dissent together with his reasons⁶.

If the appeal was to the Sultan of Brunei the judgment is similarly in the form of a report advising as to the result of the appeal, the report being delivered by the Registrar of the Privy Council to a Secretary of State for transmission to Brunei⁷.

If the appeal was to the Judicial Committee itself the judgment announces the result of the appeal, which is then incorporated in an order which is signed by the registrar⁸.

The Committee has jurisdiction to recommend the alteration of a former Order in Council on the ground that by inadvertence it did not give effect to the Committee's intention as expressed in its judgment⁹.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 74. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Judgments are also posted on the Judicial Committee section of the Privy Council's website, whose address is www.privacy-council.org.uk. Judgments of the Privy Council delivered since the beginning of 2001 bear the neutral citation [year] UKPC [judgment no].

3 Judicial Committee Act 1833 s 3 (amended by the Statute Law Revision (No 2) Act 1888).

4 For a form of Order in Council see Court Forms.

5 *Pitts v La Fontaine* (1880) 6 App Cas 482, PC.

6 Judicial Committee (Dissenting Opinions) Order 1966, dated 4 March 1966.

7 See PARA 406 ante.

8 As to appeals to the Judicial Committee itself see PARA 405 ante.

9 *Rai Jatindra Nath Chowdhury v Uday Kumar Das* (1931) LR 58 Ind App 141, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

461 Judgment

NOTE 1--Rules replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(ix) Costs/462. Discretion as to costs.

(ix) Costs

462. Discretion as to costs.

The costs of appeals are in the discretion of the Judicial Committee¹. Delay in setting down an appeal, for which no reasonable explanation is given, may result in a successful appellant not being allowed costs². It is the usual practice to make no order on costs in appeals involving constitutional questions between a central government and a province or state³ or a private individual⁴. The practice of the Committee is against giving costs to the successful appellant in a criminal appeal, save in very special circumstances⁵; but when granting special leave to appeal to a poor person in a criminal case where legal aid is not available it is the usual practice of the Board to recommend that the Crown (or the state, as the case may be) should assist the appellant with his costs of the appeal.

1 Judicial Committee Act 1833 s 15 (amended by the Statute Law Revision (No 2) Act 1888); Judicial Committee Act 1843 s 12 (amended by the Statute Law Revision Act 1891).

2 *Nanda Lal Dhur Biswas etc v Jagat Kishore Achariya Chowdhuri* (1916) 115 LT 354, PC; *Louis Dreyfus & Co v Arunachala Ayya* (1931) LR 58 Ind App 381, PC.

3 See *A-G for Manitoba v A-G for Canada* [1925] AC 561 at 569, PC (Canada); *Governor-General in Council v Madras Province (No 2)* (1945) 61 TLR 226, PC (India).

4 *Ahnee v DPP* [1999] 2 AC 294, [1999] 2 LRC 676, PC.

5 *Teper v R* [1952] AC 480 at 493, [1952] 2 All ER 447 at 452, PC, but see *Lim Chin Aik v R (No 2)* [1963] AC 498, PC; *Lanier v R* [1914] AC 221, PC; and *Parashuram Detaram Shamdasani v R* [1945] AC 264, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

462 Discretion as to costs

NOTE 1--See *Seaga v Harper (No 2)* [2009] UKPC 26, [2010] 1 WLR 312 (conditional fee agreement and insurance regime should not be introduced into taxation of costs incurred in appeals without any prior attempt to ascertain wishes of parts of Commonwealth involved).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(ix) Costs/463. Taxation of costs.

463. Taxation of costs.

All bills of costs must be referred to the Registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation¹. Costs are normally taxed on the standard

basis but may be on the indemnity basis or on the poor person's scale². Only costs incurred in England are to be taxed in England³.

The registrar must, as soon as possible after the Judicial Committee has given its decision as to the costs of any matter, issue to the party to whom costs have been awarded an order to tax and notice of the day and hour appointed by him for taxation⁴. Not less than four clear days before the time appointed for taxation this party must lodge his bill of costs, with all necessary vouchers for disbursements, and serve the opposite party with a copy of his bill of costs and of the order to tax and notice⁵. If a party fails to lodge his bill of costs and vouchers within the prescribed time, or otherwise delays or impedes the taxation, the taxing officer may, if he thinks fit, disallow his charges for drawing his bill of costs and attending the taxation⁶.

Any party aggrieved by a taxation may appeal by way of motion to the Judicial Committee⁷. Three clear days' notice of the motion must be given to the opposite party, and a copy of the notice must be left in the Judicial Committee Registry⁸.

Subject to appeal to the Committee and to any direction from it to the contrary, the amount allowed on taxation must be inserted in the order determining the appeal or petition⁹ but if the taxation is not completed before the date of the Order in Council the registrar may issue a certificate of the amount allowed¹⁰.

Where the Committee directs costs to be taxed on the poor person's scale¹¹ no fees to counsel are to be allowed, and agents are to be awarded only out-of-pocket expenses and a reasonable allowance to cover office expenses taken at about three-eighths of the usual professional charges in ordinary appeals¹².

1 Judicial Committee (General Appellate Jurisdiction) Rules r 75 (r 75 substituted by SI 1990/2297). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. In the Supreme Court of England and Wales and county courts, taxation of costs is now known as 'assessment': see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

2 See *ibid* r 75(2) (as substituted: see note 1 supra). On a taxation of costs on the standard basis, a reasonable amount in respect of all costs reasonably incurred is allowed and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount must be resolved in favour of the paying party: r 75(3) (as so substituted). On a taxation on the indemnity basis all costs are allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount must be resolved in favour of the receiving party: r 75(4) (as so substituted). As to costs on the standard and indemnity bases in the Supreme Court and county courts see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

3 *Ibid* r 76.

4 *Ibid* r 77(1).

5 *Ibid* r 77(2).

6 *Ibid* r 78.

7 *Ibid* r 79(1).

8 *Ibid* r 79(2).

9 *Ibid* r 80.

10 *Ibid* r 80 proviso.

11 The poor person's scale applies to and includes the application on which leave to appeal as a poor person (see PARA 422 ante) was granted: *ibid* r 81(2).

12 *Ibid* r 81(1).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE

463-470 Taxation of costs ... Regulation of practice

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(ix) Costs/464. Dealing with security for costs.

464. Dealing with security for costs.

When an appellant has lodged security for the respondent's costs¹, the Registrar of the Privy Council must deal with the security in accordance with the directions contained in the order determining the appeal².

¹ See PARA 421 ante.

² Judicial Committee (General Appellate Jurisdiction) Rules r 82. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE

463-470 Taxation of costs ... Regulation of practice

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(x) Miscellaneous Procedural Matters/465. Excusing compliance with rules.

(x) Miscellaneous Procedural Matters

465. Excusing compliance with rules.

The Registrar of the Privy Council has power to give directions in matters of practice and procedure and may for sufficient cause shown excuse the parties from compliance with the requirements of the Judicial Committee (General Appellate Jurisdiction) Rules¹. If the registrar thinks it desirable that that any application for such direction or such excusal should be dealt with by the Judicial Committee in open court, he may direct the party applying to lodge in the Judicial Committee Registry, and to serve on the opposite party, a notice of motion returnable before the Committee². Any party aggrieved by a direction given by registrar may appeal to the Judicial Committee by way of motion³.

1 Judicial Committee (General Appellate Jurisdiction) Rules r 83(1). As to the Judicial Committee (General Appellate Jurisdiction) Rules and their citation see PARA 416 note 1 ante.

2 Ibid r 83(2).

3 Ibid r 83(3).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE

463-470 Taxation of costs ... Regulation of practice

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(x) Miscellaneous Procedural Matters/466. Amendment of documents.

466. Amendment of documents.

Any document lodged in connection with any matter pending before Her Majesty in Council or the Judicial Committee may be amended by leave of the Registrar of the Privy Council¹. If the registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open court, he may direct the party applying to lodge in the Judicial Committee Registry, and to serve on the opposite party, a notice of motion returnable before the Committee².

1 Judicial Committee (General Appellate Jurisdiction) Rules r 84(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

2 Ibid r 84(2).

UPDATE**401-490 The Judicial Committee of the Privy Council**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE**463-470 Taxation of costs ... Regulation of practice**

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(x) Miscellaneous Procedural Matters/467. Affidavits.

467. Affidavits.

Affidavits relating to any matter pending before Her Majesty in Council or the Judicial Committee may be sworn before the Registrar of the Privy Council¹.

1 Privy Council Registrar Act 1853 s 1; Judicial Committee (General Appellate Jurisdiction) Rules r 85. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

UPDATE**401-490 The Judicial Committee of the Privy Council**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE

463-470 Taxation of costs ... Regulation of practice

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(x) Miscellaneous Procedural Matters/468. Change of agent.

468. Change of agent.

Where a party changes his agent, that party or the new agent must forthwith give the Registrar of the Privy Council and the outgoing agent notice in writing of the change, and must amend the appearance accordingly¹. Until the notices specified are given, the former agent will be considered the agent of the party until the final conclusion of the matter².

¹ Judicial Committee (General Appellate Jurisdiction) Rules r 86(1). As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante. There is no provision for the withdrawal of appearance: *Hasham v Zenab* [1958] 3 All ER 719n, [1958] 1 WLR 1214, PC.

² Judicial Committee (General Appellate Jurisdiction) Rules r 86(2).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE

463-470 Taxation of costs ... Regulation of practice

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) PRACTICE AND PROCEDURE IN COMMONWEALTH APPEALS/(x) Miscellaneous Procedural Matters/469. Drawing up orders.

469. Drawing up orders.

Orders made by the Judicial Committee which do not embody any special terms or include any special directions need not be drawn up unless the Judicial Committee otherwise directs, but a note of them must be made by the Registrar of the Privy Council¹.

¹ Judicial Committee (General Appellate Jurisdiction) Rules r 46. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE

463-470 Taxation of costs ... Regulation of practice

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(i) In general/470. Regulation of practice.

(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES

(i) In general

470. Regulation of practice.

The practice and procedure of the Judicial Committee in devolution cases is regulated by the rules scheduled to the Judicial Committee (Devolution Issues) Rules Order 1999¹. The Judicial Committee (General Appellate Jurisdiction) Rules² do not apply³. The relevant rules contain a table of fees payable by parties to an appeal or reference⁴. The right to conduct litigation in the Judicial Committee in such cases is not limited to those qualified under the terms of the Order in Council of 6 March 1896⁵ but is conferred on all persons who have the right to conduct

litigation in any of the superior courts of the United Kingdom⁶. London agents may be instructed and additional costs incurred as a result of a decision not to do so may be disallowed on taxation⁷. All petitions, references and notices of motion in such cases must be addressed to the Judicial Committee (not to Her Majesty in Council)⁸.

Except as otherwise provided by the Judicial Committee (Devolution Issues) Rules 1999, leave to intervene in proceedings is required and must be applied for by petition. The petition must be certified with the consent of the parties in the case or, if consent is refused, the petition must be indorsed with a certificate of service on the parties. All petitions for leave to intervene, whether opposed by the parties or not, will be referred to a Board of the Judicial Committee⁹.

The Registrar of the Privy Council may give such directions in matters of practice and procedure as may be just and expedient and may for sufficient cause shown extend or abridge any time limit laid down by the Judicial Committee (Devolution Issues) Rules 1999 or excuse the parties from compliance with any of the requirements of those rules¹⁰. If in his opinion it is desirable that any application for such direction or excusal should be dealt with by the Committee in open court he may direct the applicant to lodge, and to serve the opposite party with, a notice of motion returnable before the Committee¹¹. The registrar may also give directions as to the total length of time allowed for a hearing or the length of time each party is to be allowed for his oral argument. Parties will be expected to complete their submissions within the time allowed¹².

1 See the Judicial Committee (Devolution Issues) Rules Order 1999, SI 1999/665, art 2, Schedule. By virtue of art 2, the Scheduled rules may be cited as the Judicial Committee (Devolution Issues) Rules 1999.

2 As to the Judicial Committee (General Appellate Jurisdiction) Rules and their citation see PARA 416 note 1 ante.

3 Judicial Committee (Devolution Issues) Rules Order 1999, SI 1999/665, art 3.

4 See the Judicial Committee (Devolution Issues) Rules 1999 r 5.61. The Registrar of the Privy Council may direct that the appropriate fee must be paid at the time a chargeable step is taken: r 5.61(2).

5 See PARA 417 ante.

6 Judicial Committee (Devolution Issues) Rules 1999 r 1.4(1). No declaration or enrolment is required: r 1.4(1). As to rights to conduct litigation in the superior courts see PARA 332 ante; and LEGAL PROFESSIONS.

7 Ibid r 1.4(2).

8 Ibid r 1.5.

9 Ibid r 5.54(1). 'Board' means a Board of the Judicial Committee comprising a quorum (ie three: see PARA 401 ante) (or more) of members of the Committee: r 1.2. References in the Judicial Committee (Devolution Issues) Rules 1999 to a party and to a respondent are deemed to include a person intervening: r 5.54(2).

10 Ibid r 5.59(1).

11 Ibid r 5.59(2).

12 Ibid r 5.59(3). Any party aggrieved by a decision by the registrar to exercise or refuse to exercise his powers under the Judicial Committee (Devolution Issues) Rules 1999 may appeal, by notice of motion, to the Committee: r 5.59(4).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the

Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

UPDATE

463-470 Taxation of costs ... Regulation of practice

SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(i) In general/471. Preparation and amendment of documents; in general.

471. Preparation and amendment of documents; in general.

Documents which are not clearly legible or which are not produced in the form specified will not be accepted by the Judicial Committee Registry¹. All formal documents must be produced on good quality A4 paper, bound down the left hand edge and using both sides of the paper².

Any document lodged in connection with an appeal, petition or other matter pending before the Judicial Committee may be amended by leave of the Registrar of the Privy Council³. If the registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open court, he may direct the applicant to lodge in the registry, and to serve the opposite party with, a notice of motion returnable before the Committee⁴.

1 Judicial Committee (Devolution Issues) Rules 1999 r 5.55(1).

2 Ibid r 5.55(2).

3 Ibid r 5.60(1).

4 Ibid r 5.60(2).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(ii) Initiation of Proceedings/472. Appeals; leave to appeal.

(ii) Initiation of Proceedings

472. Appeals; leave to appeal.

Appeals in devolution proceedings in England and Wales lie to the Judicial Committee from the High Court and the Court of Appeal but only with leave. Leave to appeal may be granted by the court appealed from or, failing such leave, special leave may be granted by the Judicial Committee¹. A petition for special leave to appeal may only be presented to the Judicial Committee if leave has been refused by the court below² and must be presented within 28 days of the date of the judgment appealed from³. A petition presented late must state that it is out of time and give reasons why it was not lodged within the time limit⁴. Leave will not normally be given if the petition is more than three months late⁵.

A copy of the petition must be served on the respondent⁶ who must enter an appearance within 14 days of receiving service of it if he intends to participate in the proceedings⁷. The original and six copies of the petition must be lodged in the Judicial Committee Registry, together with seven copies of the order appealed from, the judgment appealed from and, if separate, the order of the court below refusing leave to appeal to the Judicial Committee⁸.

The petition will in the first instance be referred to a Board of the Judicial Committee⁹ which may refuse leave without a hearing, invite submissions from any party¹⁰ and then determine the matter without a hearing or refer the matter for an oral hearing¹¹. If a petition for special leave to appeal is referred for an oral hearing, the petitioner and all respondents who have entered an appearance will be notified of the date appointed for the hearing. Once referred for an oral hearing a petition may be listed at any time, possibly at short notice¹². At an oral hearing only one counsel may be heard for each party¹³ and authorities may not be cited without the leave of the Board¹⁴.

1 Government of Wales Act 1998 s 109, Sch 8 para 11; Scotland Act 1998 s 98, Sch 6 para 23; Northern Ireland Act 1998 s 79, Sch 10 para 20.

2 Judicial Committee (Devolution Issues) Rules 1999 r 5.1(1). The procedure for applying for special leave to appeal to the Judicial Committee is governed by Pt V Ch I (rr 5.1-5.12). Those provisions apply, with necessary modifications, to petitions for special leave to cross-appeal as they apply to petitions for special leave to appeal: r 5.1(2). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

3 Ibid r 5.2(1). A petition for special leave to appeal must (1) briefly set out the facts and points of law involved in the appeal; (2) conclude with a summary of the reasons why special leave to appeal should be granted; and (3) not normally be accompanied by supporting documents except those specified in r 5.7(1) (see the text and note 8 infra): r 5.3(1). Amendments to existing petitions and supplementary petitions will be allowed only in exceptional circumstances: r 5.3(2). Petitions must be set out in numbered paragraphs and signed by the petitioners or their counsel or solicitors: r 5.4. In any petition where in the courts below the title used for the proceedings has been such as to conceal the identity of any person, this fact must be clearly drawn to the attention of the registry at the time the petition is lodged, so that the title adopted in the Judicial Committee may take due account of the need to protect the identity of the person in question: r 5.5.

4 Ibid r 5.2(2), (3). The reasons should not normally exceed a paragraph in length: r 5(3).

5 Ibid r 5.2(4).

6 Ibid r 5.6.

7 Ibid r 5.8(1). He must inform the petitioner that he has entered an appearance: r 5.8(1). A respondent who intends to take no part in the proceedings before the Judicial Committee should notify the registry in writing of that fact: r 5.8(2). Communications from the registry concerning the petition will be sent only to those who have entered an appearance: r 5.8(3).

8 Ibid r 5.7(1). If the judgment and orders are not immediately available, the petition must be lodged in time and the judgment and orders lodged as soon as possible thereafter: r 5.7(2).

9 Ibid r 5.9. For the meaning of 'Board' see PARA 470 note 9 ante. The following additional papers must be lodged for the use of the Board within seven days of lodgement of the petition: (1) seven copies of the order of the court of first instance; (2) seven copies of the judgment (if any) of the court of first instance: r 5.10(1)(a), (b). No other papers are required, and documents other than those listed above and in r 5.7(1) (see the text and note 8 supra) will not normally be received: r 5.10(1). Where the necessary papers are not lodged within three months of presentation of the petition, and no good reason for such failure is given, the petition may, at the direction of the Registrar of the Privy Council, be referred to the Board without the papers: r 5.10(2).

10 Parties invited to lodge submissions will be informed of the date by which they may do so. Five copies must be lodged by that date and the registry must be informed by the same date if no such submissions are to be made: ibid r 5.11(2).

11 See ibid r 5.11(1), (3), (4).

12 Ibid r 5.12(1).

13 Ibid r 5.12(3). If counsel is briefed, the registry must be notified of the name: r 5.12(2).

14 Ibid r 5.12(4).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

472 Appeals; leave to appeal

NOTE 1--Government of Wales Act 1998 s 109, Sch 8 para 11 replaced by the Government of Wales Act 2006 s 149, Sch 9 para 11. When the Constitutional Reform Act 2005 s 23(1) comes into force (ie 1 October 2009: see SI 2009/1604), the Judicial Committee of the Privy Council will have no jurisdiction in relation to devolution issues under the 2006 Act; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42G.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(ii) Initiation of Proceedings/473. Appeals; presentation of petition and entry of appearance.

473. Appeals; presentation of petition and entry of appearance.

Once leave has been obtained¹, an appeal is initiated by presenting a petition of appeal². This must be done within six weeks of the date leave to appeal was granted by the court below, or within 14 days of the grant of special leave by the Judicial Committee, as the case may be³. A copy of the petition must be served on the respondent⁴ who must, if he wishes to participate in the proceedings, enter an appearance in the Judicial Committee Registry within 14 days⁵. A copy of the petition must also be served, depending on which devolution statute is being invoked⁶, on one or more Law Officers, the Welsh Assembly and ministers or departments of the Northern Ireland Executive⁷. Any person or body so served may intervene in the proceedings and become a respondent by entering an appearance within 14 days and giving notice of having done so to the parties⁸.

A petition of cross-appeal must be presented within six weeks of the presentation of the original appeal⁹.

Where the issues in two or more appeals are similar, they may be consolidated or conjoined to avoid, wherever possible, separate representations by counsel or any duplication in the submissions made¹⁰.

¹ As to leave to appeal see PARA 472 ante.

² The original petition, and one copy, must be lodged in the registry: Judicial Committee (Devolution Issues) Rules 1999 r 5.17. Petitions of appeal must consist of numbered paragraphs and be indorsed with the name of the court appealed from, the full title and (if any) the Privy Council number of the appeal to which the petition relates, and the name and address of the petitioner or his solicitor: r 5.14(1). Where leave or special leave to appeal has been obtained, a petition of appeal must state when and by whom it was granted and be signed by the appellant or his counsel or his solicitor. Where leave is not required a petition must be signed, and certified as reasonable, by two counsel: r 5.14(2). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

³ See *ibid* r 2.12(1), (2) (appeals under the Scotland Act 1998); the Judicial Committee (Devolution Issues) Rules 1999 r 3.9(1), (2) (appeals under the Government of Wales Act 1998); the Judicial Committee (Devolution Issues) Rules 1999 r 4.12(1), (2) (appeals under the Northern Ireland Act 1998).

⁴ Judicial Committee (Devolution Issues) Rules 1999 r 5.16.

⁵ *Ibid* r 5.18(1). The respondent must notify the appellant in writing that he has entered an appearance: r 5.18(1). A respondent who intends to take no part in the proceedings before the Judicial Committee must notify the registry in writing of that fact: r 5.18(2). Communications concerning the appeal will be sent by the registry only to those respondents who have entered an appearance: r 5.18(3).

⁶ *Ie* the Scotland Act 1998, the Government of Wales Act 1998 or the Northern Ireland Act 1998: see PARA 409 ante.

⁷ Where the devolution issue arises or is said to arise under: (1) the Scotland Act 1998, the Attorney General and the Lord Advocate must be served (see the Judicial Committee (Devolution Issues) Rules 1999 rr 2.8(3)(b), 2.12(3)); (2) under the Government of Wales Act 1998, the Welsh Assembly and the Attorney General must be served (Judicial Committee (Devolution Issues) Rules 1999 rr 3.5(3)(a), 3.9(3)); and (3) under the Northern Ireland Act 1998, the First Minister and deputy First Minister of the Northern Ireland Executive and the Attorney General must be served (see the Judicial Committee (Devolution Issues) Rules 1999 rr 4.8(3)(b), 4.12(3)). Where a relevant determination has been made under the Northern Ireland Act s 79, Sch 10 para 36 a specified other minister or Northern Ireland department is substituted for the First Minister and deputy First Minister: see the Judicial Committee (Devolution Issues) Rules 1999 r 4.1(2).

⁸ See *ibid* rr 2.12(4), 3.9(4), 4.12(4).

⁹ *Ibid* r 5.48(1).

10 Ibid r 5.50(1). Applications to consolidate or to conjoin appeals and other incidental applications must be made by petition: r 5.50(2). The petition must be signed by all the petitioners or their solicitors and must be submitted to the solicitors for all the other parties who have entered appearance for the indorsement of their consent. If consent is refused, the petition must be indorsed with a certificate that it has been served on the solicitors in question: r 5.50(3). If all parties consent to or join in the petition, one copy only of the petition is to be lodged. If any party refuses consent, r 5.52 applies (see PARA 478 post): r 5.50(4).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(ii) Initiation of Proceedings/474. Withdrawal of petitions and appeals.

474. Withdrawal of petitions and appeals.

Subject to the following provisions, a petition for special leave to appeal¹ or an appeal² may be withdrawn by giving notice in writing to the Registrar of the Privy Council, copied to the respondent³. Where the parties are agreed as to the terms on which the petition or appeal is to be withdrawn the notice to the registrar must briefly indicate the terms of the agreement and the respondent must confirm his agreement to the registrar in writing⁴. Subject to any agreement between the parties, the petitioner or appellant is liable to pay the respondent's costs on the standard basis⁵; however, any party who wishes to oppose the withdrawal of the appeal or petition, or who seeks terms for the withdrawal other than those described above, may lodge a petition seeking some other order⁶.

1 As to petitions for special leave to appeal see PARA 472 ante.

2 As to appeals see PARA 473 ante.

3 Judicial Committee (Devolution Issues) Rules 1999 r 5.51(1). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

4 Ibid r 5.51(2).

5 Ibid r 5.51(3). As to costs see further PARA 486 post; and see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

6 Ibid r 5.51(4).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(ii) Initiation of Proceedings/475. References.

475. References.

Two kinds of references of devolution issues to the Judicial Committee are discussed in this paragraph: (1) references by the Attorney General or the Welsh Assembly of an issue which is not the subject of legal proceedings¹; and (2) references by courts².

References of the first kind are initiated by the Attorney General or the Welsh Assembly by lodging in the Judicial Committee Registry a reference stating the question to be determined and serving a copy on the other ('the respondent')³. If the respondent intends to participate in the proceedings, he must enter an appearance within 14 days and notify the other party that he has done so⁴.

The procedure for references by courts is modelled on that for references from United Kingdom courts to the European Court of Justice ('ECJ')⁵. The court must lodge the reference in the registry and serve a copy on the parties and one or more of the Law Officers, the Welsh Assembly and ministers or a department of the Northern Ireland Executive, depending on which devolution statute⁶ governs the situation⁷. The reference must set out the question referred, the addresses of the parties, the name and address of the person who applied for or required the reference to be made⁸, a concise statement of the background including the facts of the case and the main issues and contentions of the parties, the relevant law and the reasons why an answer to the question referred is considered necessary for the purpose of disposing of the proceedings⁹. All judgments already given in the proceedings must be annexed to the reference¹⁰. Parties who intend to participate in the proceedings on the reference must enter an appearance within 14 days¹¹, as also must a Law Officer, the Welsh Assembly or a minister or department of the Northern Ireland Executive, as the case may be, who or which desires to intervene¹².

Provision is also made by the Judicial Committee (Devolution Issues) Rules 1999 for a reference by the Judicial Committee to the ECJ. An order by the Committee referring a question involving a devolution issue to the ECJ for a preliminary ruling may be made on its own motion at any stage of proceedings or on the application of a party by notice of motion before the hearing¹³. The proceedings in which such an order is made must, unless the Committee otherwise orders,

be stayed until the ECJ has given a preliminary ruling on the question referred to it or the reference is withdrawn¹⁴.

1 Government of Wales Act 1998 s 109, Sch 8 para 31(1).

2 Ibid Sch 8 paras 10, 18, 19, 27, 29, 30; Scotland Act 1998 s 98, Sch 6 paras 10, 11, 22, 30, 32, 33; Northern Ireland Act 1998 s 79, Sch 10 paras 9, 19, 28, 29, 32, 33. In the Judicial Committee (Devolution Issues) Rules 1999 'court' is defined to include tribunals: r 1.2(1). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

3 See ibid r 3.2(1), (2).

4 Ibid r 3.3.

5 As to references by United Kingdom courts to the European Court of Justice see CIVIL PROCEDURE vol 12 (2009) PARA 1720 et seq.

6 In the Scotland Act 1998, the Government of Wales Act 1998 or the Northern Ireland Act 1998: see PARA 409 ante.

7 See the Judicial Committee (Devolution Issues) Rules 1999 rr 2.8, 3.5, 4.8. The rights of the Law Officers, the Welsh Assembly and the Northern Ireland Executive to be served and to intervene are the same as for appeals: see PARA 473 note 7 ante.

8 This person need not be one of the parties. Depending on which devolution statute governs the situation, a Law Officer, the Welsh Assembly or a minister or department of the Northern Ireland Executive may require a court to make a reference: see the Government of Wales Act 1998 Sch 8 para 30; the Scotland Act 1998 Sch 6 para 33; the Northern Ireland Act 1998 Sch 10 para 33.

9 See the Judicial Committee (Devolution Issues) Rules 1999 rr 2.9(1), 3.6(1), 4.9(1).

10 See ibid rr 2.9(2), 3.6(2), 4.9(2).

11 See ibid rr 2.10, 3.7, 4.10.

12 See ibid rr 2.11, 3.8, 4.11.

13 Ibid r 5.49(1).

14 Ibid r 5.49(2).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

475 References

TEXT AND NOTES 1, 2, 8--Scotland Act 1998 Sch 6 and Northern Ireland Act 1998 Sch 10 amended: Constitutional Reform Act 2005 Sch 9 paras 87-92, 103-106, 115-119, Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1610). Government of Wales Act 1998 s 109, Sch 8 replaced by the Government of Wales Act 2006 s 149, Sch 9. When the 2005 Act s 23(1) comes into force (ie 1 October 2009: see SI 2009/1604), the Judicial Committee of the Privy Council will have no jurisdiction in relation to devolution issues under the 2006 Act; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42G.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(ii) Initiation of Proceedings/476. Anonymity and reporting restrictions.

476. Anonymity and reporting restrictions.

Where in the courts below a title has been used for the proceedings so as to conceal the identity of any person, this fact must be drawn to the attention of the Judicial Committee Registry when the appeal is lodged¹. Where the Judicial Committee has power to restrict the reporting of an appeal, the parties are required to consider whether it would be appropriate for the power to be exercised and to inform the registry if such an order has been made by the court below².

¹ Judicial Committee (Devolution Issues) Rules 1999 r 5.15(1). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

² Ibid r 5.15(2). A request for such an order must be made in writing, preferably on behalf of all parties to the appeal, as soon as possible after the appeal has been presented and not later than 14 days before the commencement of the hearing, citing the power under which it may be made: r 5.15(2).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(ii) Initiation of Proceedings/477. Security for costs.

477. Security for costs.

Where an appellant is required to give security for costs he must pay the appropriate sum into the Judicial Committee Registry within seven days of presentation of the petition of appeal¹, unless all the respondents waive the requirement². Security for costs may not be required from an appellant who has been granted a legal aid certificate³ or from a Law Officer⁴, or from a minister or department of the government or of the Scottish or the Northern Ireland Executive or from the Welsh Assembly⁵.

1 Judicial Committee (Devolution Issues) Rules 1999 r 5.19(1). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante. As to the disposal of security money see r 5.40; and PARA 486 post.

2 If all the respondents agree to security for costs being waived, the appellant may lodge a form of consent to a waiver signed by the respondents. Thereafter an order will be made releasing the appellant from the obligation to pay security. Consent must be lodged within seven days of the presentation of an appeal: *ibid* r 5.19(2).

3 As to the replacement of legal aid in England and Wales with funding under the Access to Justice Act 1999 Pt I (ss 1-26) see LEGAL AID vol 65 (2008) PARA 2.

4 'Law Officer' means the Attorney General, the Lord Advocate, the Advocate General for Scotland or the Attorney General for Northern Ireland: Judicial Committee (Devolution Issues) Rules 1999 r 1.2. As to the Law Officers see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 *Ibid* r 5.19(3).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(ii) Initiation of Proceedings/478. Incidental petitions and motions.

478. Incidental petitions and motions.

Unless the Registrar of the Privy Council directs otherwise, incidental petitions (including any interlocutory petition which relates to a petition of appeal) must be referred to a Board of the Judicial Committee¹. The original and six copies of the petition must be lodged and a copy served on the other party². If an oral hearing is ordered the parties may apply to the registrar to lodge affidavits and such other documents as they may wish. In addition to the original, six copies will be required. Copies of such documents must be served on the other parties not less than seven days before the hearing³.

These provisions apply, with appropriate modifications, to notices of motion as they apply to incidental petitions⁴.

1 Judicial Committee (Devolution Issues) Rules 1999 r 5.52(1). For the meaning of 'Board' see PARA 470 note 9 ante. As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

2 Ibid r 5.52(2).

3 Ibid r 5.52(3).

4 Ibid r 5.52(4).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iii) Preparation for the Hearing/479. Statement of facts and issues and appendix.

(iii) Preparation for the Hearing

479. Statement of facts and issues and appendix.

Within 28 days of lodging his petition of appeal¹ the appellant must prepare and lodge a statement of the facts and issues involved in the appeal and an appendix². The statement of facts and issues should if possible be a single document agreed between the parties³, but if no agreement can be reached, the respondent may prepare his own statement and append it to that of the appellant⁴. The appendix, which should also if possible be agreed between the parties, must consist of the documents used in evidence or recording proceedings in the courts below⁵. Any documents disputed between the parties and documents not included in the appendix but that may be required at the hearing must be held in readiness to be introduced at the hearing if leave to do so is given⁶. When lodging the statement and the appendix the appellant must apply to set the appeal down for hearing⁷.

1 As to lodging the petition of appeal see PARA 473 ante.

2 Judicial Committee (Devolution Issues) Rules 1999 r 5.26. The appendix must be bound with plastic comb binding, in limp board covers: r 5.57(1). All documents must be numbered and each part of the appendix must contain a list of its contents: r 5.57(2). Documents of an unsuitable size or form for binding with the other

documents, such as maps or booklets, should be inserted in pockets at the back of the appropriate volume: r 5.57(3). Where there is a cross-appeal, documents in respect of both the original appeal and the cross-appeal must be included in one appendix and lodgment of the statement and appendix, and setting down for hearing, are the responsibility of the original appellant: r 5.40(3). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

3 Ibid r 5.20(1). The statement need not set out or summarise the judgments of the lower courts, nor set out legislative provisions, nor contain an account of the proceedings below: r 5.20(4).

4 Ibid r 5.20(2). If the respondent neither agrees to a joint statement nor produces a statement of his own for attachment to the appellant's statement, the appellant may lodge his statement with a certificate to the effect that the respondent has been offered an opportunity to join in preparation of the statement: r 5.20(3).

5 Ibid r 5.21. The appendix must contain only such documents, or such extracts from documents, as are clearly necessary for the support and understanding of the argument of the appeal: r 5.22(1). It must not include: (1) any document which was not used in evidence or does not record proceedings relevant to the action (now known as a 'claim' in England and Wales: see CIVIL PROCEDURE vol 11 (2009) PARA 18) in the court below; or (2) transcripts of arguments in the courts below unless and to the extent that any party relies on remarks by a judge or the arguments refer to facts which are admitted by all parties and as to which no evidence was called: r 5.22(2). The appendix may consist of one or two parts. Part I should contain: (a) formal originating documents; (b) case stated (if any); (c) judgments of the courts at first instance and on appeal together with copies of all orders; (d) the relevant legislation; (e) any crucial document on which the action is founded, such as a will, contract, map, plan etc, or the relevant extract from such a document: r 5.22(3). Other documents should be included in Part II of the appendix: r 5.22(4). Where the appellant declines to include in the appendix any documents which the respondent considers necessary for his argument, he may prepare and reproduce them himself; they must be produced in the same form as, and should be paginated consecutively with, the appendix: r 5.24.

6 Ibid r 5.23. Five copies are required; and the other parties must be given notice of any documents that will be held in readiness at the hearing: r 5.23.

7 Ibid r 5.28. The appellant must deposit in the Judicial Committee seven copies of the statement, seven copies of Part I of the appendix and 15 copies of Part II of the appendix (if any): r 5.27(1). The respondent must also (where applicable) lodge seven copies of his additional documents if supplementary to Part I of the appendix (15 copies if supplementary to Part II of the appendix): r 5.27(2).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iii) Preparation for the Hearing/480. Allocation of time.

480. Allocation of time.

Within seven days of the setting down of the appeal¹ each party must notify the Judicial Committee Registry of the time, in hours, that counsel consider necessary for their addresses to the Board². Counsel are expected to keep to their estimates³.

1 As to setting down the appeal see PARA 479 the text and note 7 ante.

2 Judicial Committee (Devolution Issues) Rules 1999 r 5.29(1). Amended estimates must be communicated to the registry at once: r 5.29(3). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

3 Ibid r 5.29(2). This is subject to any directions that may be given at or before the hearing: r 5.29(2). As to the Registrar of the Privy Council's power to give directions as to the total length of time allowed for a hearing or the length of time each party is to be allowed for his oral argument see PARA 470 note 12 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iii) Preparation for the Hearing/481. Cases and authorities.

481. Cases and authorities.

Within 28 days of the setting down of the appeal¹ each party must lodge seven copies of its case and notify the other party that it has done so². The case must be a succinct statement of the party's argument, not duplicating any other documents³. It must conclude with a numbered summary of the reasons on which the argument is founded and must bear the signature of at least one counsel who has appeared in the court below or who will be briefed for the hearing before the Judicial Committee⁴. No party is entitled to be heard by the Judicial Committee unless he has lodged a case⁵. All appellants must if possible join in one case, and likewise all respondents unless they have distinct interests⁶. As soon as all the cases have been lodged, they must be exchanged between the parties⁷. A total of eight sets of authorities to be relied on at the hearing must be provided: two of them by the end of the second week before the hearing and the remainder at least seven days before the hearing⁸.

1 As to setting down the appeal see PARA 479 the text and note 7 ante.

2 Judicial Committee (Devolution Issues) Rules 1999 r 5.30(1). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

3 See *ibid* r 5.30(2). A case should be a succinct statement of a party's argument in the appeal, omitting (though if necessary referring to) material contained in the statement of facts and issues and the appendix and confined to the heads of argument which counsel propose to submit at the hearing: r 5.30(2). It should consist of paragraphs numbered consecutively; and references by page and line to the relevant portions of the statement of facts and issues and the appendix must as far as practicable be reproduced in the margin: r 5.30(2). If a party intends to invite the Judicial Committee to depart from one of its own decisions this intention must be clearly stated in a separate paragraph of the case, to which special attention must be drawn. A respondent who wishes to contend that a decision of the court below should be affirmed on grounds other than those relied on by that court must set out the grounds for that contention in the case: r 5.30(3). As to the extent to which the Judicial Committee is bound by its own decisions see PARA 454 the text and note 12 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 103.

Where there is a cross-appeal, argument in respect of a cross-appeal must be included by each party in their case in the original appeal. Such an inclusive case must clearly state that it is lodged in respect of both the original and cross-appeals: r 5.48(2).

4 *Ibid* r 5.30(4). The statement and case must be produced with letters down the inside margin. The outside margin should carry references to the relevant pages of the appendix: r 5.56(1). The front page of the statement must carry the references of every law report of the cause in the courts below. A headnote summary should be given, whether or not the cause has been reported: r 5.56(2). The front page of the statement must carry an indication of the time occupied by the cause in each court below: r 5.56(3). The statement must be signed by counsel on both sides, and their names clearly indicated. Where the statement is not agreed to by all parties it must be signed by counsel for the appellant and must indicate that the respondent has been given an opportunity to join in the statement: r 5.56(4). Each party's case must be signed by his counsel above their printed names: r 5.56(5).

5 *Ibid* r 5.30(6).

6 *Ibid* r 5.31(1). Two or more appellants or respondents may, at their own risk as to costs, lodge separate cases in the same appeal: r 5.30(5). Where the respondents lodge separate cases, the first to lodge his case must give a certificate by letter in one of two prescribed forms: see r 5.31(1). All remaining respondents wishing to lodge a case must respectively petition to do so in respect of each of their separate cases. Such petitions must be consented to by the appellant, and must set out the reasons for separate lodgment: r 5.31(2). Parties whose interests in the appeal are passive (eg stake-holders, trustees, executors etc) are not required to lodge a separate case but must ensure that their position is explained in one of the cases lodged: r 5.31(3).

7 *Ibid* r 5.32. The number of cases provided must be sufficient to meet the reasonable requirements of the other parties: r 5.32. As soon as cases have been exchanged, and in any event no later than 14 days before the proposed date of hearing, the appellant must lodge (in addition to the documents earlier lodged) eight bound volumes. Each must contain: (1) the petition of appeal; (2) the petition of cross-appeal (if any); (3) the statement of facts and issues; (4) the appellant's and respondent's cases; (5) Part I of the appendix; (6) respondent's additional documents (if any and if supplementary to Part I of the appendix): r 5.33(1). To enable the appellant to lodge the bound volumes, the respondent must provide him with eight further copies of his case and, where applicable, with eight further copies of the additional documents: r 5.33(2). The respondent should arrange with the appellant for the binding of such volumes as the respondent's counsel and solicitor may require: r 5.33(3). The bound volumes must be bound in the same manner as the appendix. They should contain cut out indices for each of the items listed in r 5.33(1), tabbed with the name of the document on the front sheet of each. The front cover should carry a list of the contents and the names of the solicitors for all parties. The short title of the cause and (if there is more than one volume) the volume number should be given on a strip affixed to the plastic spine. Each volume should include a few blank pages at either end: r 5.58.

8 See *ibid* r 5.35; and *Registrar's Practice Direction: Copies of Documents* (21 September 2000) PARA 7.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iii) Preparation for the Hearing/482. References.

482. References.

Apart from a few matters in respect of which special provision is made, the rules governing preparation for the hearing of a reference are analogous to those for appeals¹. Many of the rules governing appeals are expressly applied².

A reference lodged in the Judicial Committee Registry must consist of numbered paragraphs and be indorsed with the title of the reference and the name and address of the person or court making the reference³. The original reference must be signed by the person making the reference or his counsel or solicitor, or, where the reference is by a court, by a judge or proper officer of the court, and lodged in the registry together with seven copies, if it is a reference from a court, or 15 copies in the case of other references⁴. Where the reference is by a court, service of the reference on the parties may be effected in any manner authorised by the rules of that court⁵. Where the reference is by a court, the parties must lodge their cases within 28 days after the appendix has been lodged⁶ and each party must lodge seven copies⁷. For other references, each party must lodge 15 copies of his case⁸.

1 For the general rules governing references see the Judicial Committee (Devolution Issues) Rules 1999 Pt V Ch 3 (rr 5.41-5.46). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

2 See *ibid* r 5.46.

3 *Ibid* r 5.41(1).

4 *Ibid* r 5.41(2).

5 *Ibid* r 5.42.

6 *Ibid* r 5.43(2).

7 *Ibid* r 5.43(1)(a).

8 *Ibid* r 5.43(1)(b).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iv) The Hearing; Judgment and Costs/483. Notice of hearing etc.

(iv) The Hearing; Judgment and Costs

483. Notice of hearing etc.

Once an appeal has been set down¹ it may be called on at any time, possibly at short notice². The Judicial Committee Registry must be informed as early as possible of the names of counsel briefed³. Unless otherwise ordered upon application before or at the hearing, only two counsel are admitted to be heard on behalf of each party or intervenor⁴.

A reference will be automatically set down for hearing when all the parties have lodged their cases⁵.

1 As to setting down an appeal see PARA 473 the text and note 7 ante.

2 Judicial Committee (Devolution Issues) Rules 1999 r 5.34(1). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

3 Ibid r 5.34(2).

4 Ibid r 5.34(3).

5 Ibid r 5.44. As to references see PARAS 475, 482 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iv) The Hearing; Judgment and Costs/484. New submissions.

484. New submissions.

If, after the conclusion of the argument of an appeal, a party wishes to bring to the notice of the Judicial Committee new circumstances which have arisen and which might affect the decision or order of the Committee, application must be made forthwith to the Registrar of the Privy Council for leave to make new submissions. The application must indicate the circumstances and the submissions it is desired to make, and a copy must be sent to the other parties to the appeal¹.

¹ Judicial Committee (Devolution Issues) Rules 1999 r 5.53. As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iv) The Hearing; Judgment and Costs/485. Judgment.

485. Judgment.

Where judgment in an appeal is reserved, the Registrar of the Privy Council notifies the parties in due course of the day appointed for the delivery of judgment¹. One junior only of counsel for each party or group of parties who have lodged a case is required to attend when judgment is delivered².

Unless the Judicial Committee directs otherwise, once a final judgment has been given on a reference by a court the proceedings stand remitted to the court from which the reference came without further order, subject to the disposal of any outstanding issues as to the costs of the reference³.

¹ Judicial Committee (Devolution Issues) Rules 1999 r 5.37(1). As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante.

² Ibid r 5.37(2). Judgments are also posted on the Judicial Committee section of the Privy Council's website, whose address is www.privacy-council.org.uk. Judgments of the Privy Council delivered since the beginning of 2001 bear the neutral citation [year] UKPC [judgment no]. Judgment numbers in devolution cases bear the prefix 'D'.

³ Judicial Committee (Devolution Issues) Rules 1999 r 5.45. As to references by a court see PARAS 475, 482 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) PRACTICE AND PROCEDURE IN DEVOLUTION CASES/(iv) The Hearing; Judgment and Costs/486. Costs.

486. Costs.

If in a criminal appeal either party wishes to seek an order for costs, or in a civil appeal an order other than that costs be awarded to the successful party, submissions to that effect must be made at the conclusion of the hearing¹. Where an order for costs has been made, the receiving party's bill of costs for taxation must be lodged within three months of the date of the final judgment or decision of the Judicial Committee². Bills of costs are taxed by the Registrar of the Privy Council on the standard basis, unless the order specifies that they shall be taxed on the indemnity basis³. The registrar may be asked to review his taxation⁴, and an appeal lies from his decision on review to the Judicial Committee⁵.

Where the appellant is ordered to pay the costs of the appeal then unless it is otherwise agreed between the parties, the respondent's costs are first satisfied, either in whole or in part, by direct payment to the respondent from money deposited⁶ as security⁷. If the total amount of the respondent's costs as allowed can be so satisfied any balance of the money in the Judicial Committee Registry must be remitted to the party who paid it in⁸. If the respondent's costs are in part satisfied by such payment, the certificate of taxation which is forwarded to the respondent must take account of the amount so paid⁹. Where more than one bill of respondent's costs require payment by the appellant, and the money deposited as security is insufficient to satisfy all the bills, the money must be divided between the bills in proportion to their amounts as allowed¹⁰.

Where the appellant is not ordered to pay the costs of the appeal, money paid by him as security must be returned to him when the final order has been issued¹¹.

If an appeal is withdrawn before setting down, or is dismissed for want of prosecution, or if the respondent fails to lodge a bill of costs within three months, the appellant may make written application to the registrar for the return to him of money deposited as security¹².

1 See the Judicial Committee (Devolution Issues) Rules 1999 r 5.36(1); *Practice Direction: Applications for Costs* (September 2000) PARA 2. As to the citation of the Judicial Committee (Devolution Issues) Rules 1999 see PARA 470 note 1 ante. Leave may be given to a party to make submissions as to costs when a reserved judgment is delivered: see r 5.36(2). As to the delivery of reserved judgments see PARA 484 ante.

2 Ibid r 5.38. In the Supreme Court of England and Wales and county courts, taxation of costs is now known as 'assessment': see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

3 Ibid r 5.39(1), (2). On a taxation of costs on the standard basis there is allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount are to be resolved in favour of the paying party: r 5.39(3). On a taxation on the indemnity basis all costs are allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount are to be resolved in favour of the receiving party: r 5.39(4). Cf the standard basis and the indemnity basis for costs in the Supreme Court and county courts: see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

4 Ibid r 5.39(5).

5 Ibid r 5.39(6).

6 See under ibid r 5.19(1): see PARA 477 ante.

7 Ibid r 5.40(1).

8 Ibid r 5.40(2).

9 Ibid r 5.40(3).

10 Ibid r 5.40(4).

11 Ibid r 5.40(5).

12 Ibid r 5.40(6). Such application must be accompanied by the written consent of all the respondents who have entered an appearance. If any respondent refuses consent, the appellant may send him a written demand that he lodge a bill of costs within 28 days from the date of such notice; and, if the registrar is satisfied that such a demand was duly sent and if the respondent fails to lodge a bill of costs within the time specified, the money deposited must be returned to the appellant: r 5.40(6).

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

470-486 Regulation of practice ... Costs

1999 Rules revoked: SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) PRACTICE AND PROCEDURE IN OTHER APPEALS/487. Ecclesiastical appeals.

(5) PRACTICE AND PROCEDURE IN OTHER APPEALS

487. Ecclesiastical appeals.

No special rules have been made to govern the limited class of faculty appeals which now lie from the Arches Court of Canterbury and the Chancery Court of York¹, and they are accordingly governed by the general procedure prescribed in the nineteenth century².

An appeal against a scheme of the Church Commissioners made under the Pastoral Measure 1983 lies to Her Majesty in Council but only at the instance of any person who duly made written representations with respect to the scheme in draft and with the leave of the Judicial Committee³. A person intending to apply for leave to appeal must send a written notice of his intention to the Clerk of the Privy Council with a copy to the Church Commissioners⁴. If the Clerk of the Privy Council is satisfied that the notice is from a qualified person he transmits it to the Registrar of the Privy Council and notifies the applicant and the Church Commissioners that he has done so⁵. Within 28 days of receiving that notification the applicant must lodge five copies of his application in the Judicial Committee Registry stating the grounds of his appeal, summarising any facts on which he intends to rely and annexing a copy of the scheme and of the commissioners' statement given to the applicant⁶. The Judicial Committee considers the application; if it grants leave, the appeal will be registered, both sides will be notified and the appellant must then without delay lodge five copies of his petition of appeal and serve a copy on the commissioners within 14 days of the lodgment⁷. The petition must set out clearly and succinctly in numbered paragraphs all necessary facts and there must be annexed to it a copy of the scheme, of the commissioners' statement⁸ and any other documents to which the appellant may wish to refer⁹. The commissioners must then without delay lodge five copies of their answer to which are annexed copies of any documents to which they may wish to refer, and they must serve a copy of it on the appellant within 14 days¹⁰. The appeal is set down as soon as the answer is lodged¹¹. Before the appeal is heard the commissioners must also lodge a map showing the boundaries of any areas affected by the scheme¹². The appeal may be dismissed for non-prosecution if the appellant fails to lodge his petition of appeal within three months of receiving notice that he has been granted leave to appeal, or within such extended period as the registrar may allow¹³. After hearing the appeal the Committee reports to Her Majesty in Council and may propose that the appeal be allowed or dismissed or that the scheme be returned to the commissioners for reconsideration¹⁴. Any bill of costs under an order of the Committee is referred to the registrar for taxation, and the taxation is regulated by the rules of the Judicial Committee so far as these are applicable¹⁵.

1 See the Ecclesiastical Jurisdiction Measure 1963 s 8; and PARA 411 ante.

2 See the Rules for Appeals in Ecclesiastical and Maritime Causes dated 11 December 1865. The appeal is by petition (r 3), upon the lodgment of which the Registrar of the Privy Council issues an inhibition and citation and a monition for process (r 4), which are served on the registrar of the court below (r 6). The inhibition and citation are also served on the other party (r 6). The appellant returns them, duly served, into the registry (r 7), and lodges and delivers to the respondent the appropriate number of copies of the appendix (ie the record of the proceedings with all relevant documents) and of his case (rr 10-12, 28). The respondent may enter appearance (r 8) and file a declaration of adhesion indicating any parts of the judgment from which he desires to appeal (r 9), and must lodge and deliver to the appellant the appropriate number of copies of his case (rr 13, 28). The appeal then stands for hearing (r 14).

3 Pastoral Measure 1983 s 9(2).

4 Ibid s 9(3), Sch 2 para 1. This must be done within 28 days after service of the notice of submission of the scheme: s 9(1).

5 Ibid Sch 2 para 3.

6 Ibid Sch 2 para 4. The statement referred to in the text is the statement given to the applicant under s 9(1)(a): see ECCLESIASTICAL LAW.

7 Ibid Sch 2 paras 5, 6. The petition is lodged in the Judicial Committee Registry: Sch 2 para 6.

8 le the statement under ibid s 9(1)(a): see ECCLESIASTICAL LAW.

9 Ibid Sch 2 para 6.

10 Ibid Sch 2 para 7.

11 Ibid Sch 2 para 9.

12 Ibid Sch 2 para 10.

13 Ibid Sch 2 para 11.

14 Ibid s 9(6).

15 Ibid Sch 2 para 12. The rules referred to are the Judicial Committee (General Appellate Jurisdiction) Rules rr 75-82 (amended by SI 1990/2297): see PARAS 463-464 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

487 Ecclesiastical appeals

NOTE 15--Rules replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) PRACTICE AND PROCEDURE IN OTHER APPEALS/488. Appeals by medical practitioners.

488. Appeals by medical practitioners.

If a medical practitioner wishes to appeal to the Judicial Committee under the Medical Act 1983¹ against a decision of the General Medical Council or one of its committees he must, within 28 days of receiving notification of the direction or order, enter an appearance in the Judicial Committee Registry, lodge a petition of appeal² reciting succinctly the principal steps leading to the appeal but not travelling into the merits of the case³ and serve a copy of the petition on the General Medical Council⁴. The council must then within 21 days enter an appearance and prepare an authenticated record of the proceedings at which the decision was made and

deliver it and seven copies of it to the registry and three copies to the appellant⁵. Each party must then within 28 days lodge seven copies of his or its case, setting out the circumstances of the appeal and the contentions to be urged⁶. The appeal is set down as soon as both cases are lodged and the parties thereupon exchange three copies of their respective cases⁷. The procedure at the hearing and the delivery of judgment is similar to the procedure on a Commonwealth appeal⁸. An appellant may petition for the withdrawal of his appeal⁹ and if the appeal is not prosecuted within the period prescribed the council may petition for its dismissal¹⁰. Certain provisions of the Judicial Committee (General Appellate Jurisdiction) Rules are applied to these appeals including that which gives power to excuse compliance with the rules and to give directions on matters of practice and procedure¹¹. Costs may be awarded and are taxed by the Registrar of the Privy Council¹².

The prospective abolition of this right of appeal and its replacement by a right of appeal to the High Court has already been discussed¹³.

1 See PARA 412 ante.

2 See the Medical Act 1983 s 40(3) (as amended); and PARA 412 ante; the Judicial Committee (Medical Rules) Order 1980, SI 1980/873, Schedule r 2.

3 Ibid Schedule r 3.

4 Ibid Schedule r 2.

5 Ibid Schedule r 4; *Registrar's Practice Direction: Copies of Documents* (21 September 2000) PARA 6.

6 Judicial Committee (Medical Rules) Order 1980, SI 1980/873, Schedule r 5; *Registrar's Practice Direction: Copies of Documents* (21 September 2000) PARA 6.

7 Judicial Committee (Medical Rules) Order 1980, SI 1980/873, Schedule r 6.

8 See PARAS 454-461 ante.

9 Judicial Committee (Medical Rules) Order 1980, SI 1980/873, Schedule r 9.

10 Ibid Schedule r 10.

11 See ibid rr 14, 15; and see the Judicial Committee (General Appellate Jurisdiction) Rules r 83; and PARA 465 ante. As to the citation of the Judicial Committee (General Appellate Jurisdiction) Rules see PARA 416 note 1 ante.

12 Judicial Committee (Medical Rules) Order 1980, SI 1980/873, Schedule r 12.

13 See PARA 412 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

488 Appeals by medical practitioners

NOTE 11--Rules replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) PRACTICE AND PROCEDURE IN OTHER APPEALS/489. Appeals by other healthcare professionals.

489. Appeals by other healthcare professionals.

Separate Orders in Council prescribe the procedure in appeals against erasure or suspension from their respective registers¹ by dentists², opticians³, veterinary surgeons⁴, osteopaths⁵ and chiropractors⁶. The procedure in each case is similar to that for an appeal by a medical practitioner⁷.

The prospective abolition of most of these rights of appeal and their replacement by rights of appeal to the High Court has already been discussed⁸.

1 For the jurisdiction see PARA 413 ante.

2 See the Judicial Committee (Dentists Rules) Order 1985, SI 1985/172.

3 See the Judicial Committee (Opticians Rules) Order 1960, SI 1960/1661.

4 See the Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150 (as amended).

5 See the Judicial Committee (Osteopaths Rules) Order 2000, SI 2000/251.

6 See the Judicial Committee (Chiropractors Rules) Order 2000, SI 2000/2822.

7 See PARA 488 ante.

8 See PARA 413 ante.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

489 Appeals by other healthcare professionals

NOTE 4--SI 1967/1150 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) PRACTICE AND PROCEDURE IN OTHER APPEALS/490-500. Admiralty and prize appeals.

490-500. Admiralty and prize appeals.

Procedure on appeal to the Judicial Committee from courts of Admiralty or Vice-Admiralty in certain British possessions and the Court of Admiralty of the Cinque Ports¹ is regulated by the Judicial Committee (General Appellate Jurisdiction) Rules².

The Judicial Committee may, if it thinks fit, require the attendance of two nautical assessors on the hearing of Admiralty appeals³. The preliminary procedure to be followed abroad is regulated by general rules or by special rules applying to courts in particular territories⁴.

In prize cases⁵ procedure has been prescribed for courts when acting as prize courts⁶, and special provision has been made governing those courts when admitting appeals to the Committee or when giving leave to appeal⁷. An appellant whose appeal has been admitted must prosecute it in accordance with the current rules governing the practice and procedure in appeals to Her Majesty in Council⁸.

On an appeal to the Committee from a prize court on facts the findings of the judge below are not conclusive, but may be reviewed, the appeal being treated as a rehearing in the same way as an appeal to the Court of Appeal from a High Court judge sitting without a jury. The Committee, however, attaches great weight to the fact that the judge below has heard the witnesses and to his opinion of their credibility and the value of their evidence⁹.

1 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 210 et seq.

2 As to the Judicial Committee (General Appellate Jurisdiction) Rules and their citation see PARA 416 note 1 ante. For the procedure see PARA 416 et seq ante. The rules apply to all matters falling within the appellate jurisdiction of the Judicial Committee subject to the provisions of any statute or statutory rule or order to the contrary: Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, SI 1982/1676, art 3.

3 Judicial Committee (General Appellate Jurisdiction) Rules r 73.

4 General rules governing procedure in colonial courts of Admiralty and Vice-Admiralty Courts were incorporated in an Order in Council dated 23 August 1883 (SR & O Rev 1948 IV p 625) (which were made under the Vice Admiralty Courts Act 1863 s 14 and applied and saved on the repeal of that Act by the Colonial Courts of Admiralty Act 1890 ss 16(3), 18, Sch 2 (all now repealed by the Statute Law (Repeals) Act 1986)). The Order in Council has however been superseded in relation to courts in certain British possessions by local orders made under the Colonial Courts of Admiralty Act 1890 s 7 (as amended): see further COMMONWEALTH vol 13 (2009) PARA 838.

5 See generally PRIZE. Appeals from all Admiralty courts in prize cases (including the High Court when acting as a prize court) lie to the Judicial Committee: see PARA 410 ante.

6 See the Prize Court Rules 1939, SR & O 1939/1466; and PRIZE vol 36(2) (Reissue) PARA 852 et seq.

7 See *ibid* Ord 44; and PRIZE vol 36(2) (Reissue) PARA 887.

8 *Ibid* Ord 44 r 15. The current rules are the Judicial Committee (General Appellate Jurisdiction) Rules: see note 2 *supra*.

9 *The Ophelia* [1916] 2 AC 206, PC.

UPDATE

401-490 The Judicial Committee of the Privy Council

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

490-500 Admiralty and prize appeals

TEXT AND NOTES--SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/4. THE ADMINISTRATION OF THE SUPREME COURT AND COUNTY COURTS

4. THE ADMINISTRATION OF THE SUPREME COURT AND COUNTY COURTS

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(1) CENTRAL ADMINISTRATION; THE LORD CHANCELLOR'S DEPARTMENT AND THE COURT SERVICE/501. The Lord Chancellor's Department.

(1) CENTRAL ADMINISTRATION; THE LORD CHANCELLOR'S DEPARTMENT AND THE COURT SERVICE

501. The Lord Chancellor's Department.

At the time of the reorganisation of the higher courts by the Courts Act 1971¹, the Lord Chancellor became directly responsible for the administration of the Supreme Court and the county courts². Although he had, before that time, exercised control over many aspects of court administration³, the Royal Commission on Assizes and Quarter Sessions took the view that a unified court service under the control of a single minister was necessary for the administration of the new system of courts which it recommended⁴. Consequently, important administrative changes were made, which did not generally require statutory authority, to implement these recommendations. The Supreme Court and the county courts are now administered by the Lord Chancellor through the unified Court Service, which is an executive agency of his department⁵.

The Lord Chancellor is appointed by the monarch on the recommendation of the Prime Minister, and the appointment is made by the monarch delivering the Great Seal of the United Kingdom into his custody⁶ and addressing him by the title of his office⁷. There are no statutory qualifications for the office⁸ although all holders of the office in modern times have been legally qualified and many have previously held high judicial office⁹.

The Lord Chancellor's functions and duties in relation to the administration of the courts include:

- 49 (1) the appointment of judges¹⁰;
- 50 (2) requesting or directing judges to sit in particular courts and nomination of judges to particular courts¹¹;

- 51 (3) giving directions and making orders relating to the business of the courts¹²;
- 52 (4) the appointment and removal of certain court officers¹³;
- 53 (5) membership of, and appointment of members to, rule committees¹⁴;
- 54 (6) establishment and maintenance of the Civil Justice Council¹⁵;
- 55 (7) making orders with regard to court fees¹⁶;
- 56 (8) appointing members to, and giving administrative and other support to, the Legal Services Consultative Panel¹⁷;
- 57 (9) appointing members to the Legal Services Commission¹⁸ and generally providing the framework of priorities for the Community Legal Service and the Criminal Defence Service¹⁹;
- 58 (10) powers with respect to certain other appointments²⁰;
- 59 (11) supervision of judicial training²¹;
- 60 (12) judicial duties in the Supreme Court²² and House of Lords²³;
- 61 (13) custody of the Great Seal²⁴.

The structure of the Lord Chancellor's Department is described in the current edition of *The Civil Service Yearbook* and is discussed elsewhere in this work²⁵. As well as the Court Service, the Public Trust Office is also an executive agency of the Lord Chancellor's Department. It exercises functions of the Public Trustee and administrative functions of the Court of Protection²⁶.

The Lord Chancellor's Department maintains an internet site on the World Wide Web which contains information about the courts and judiciary and the legal system²⁷.

The Lord Chancellor's Department is subject to investigation by the Parliamentary Commissioner for Administration²⁸.

The Lord Chancellor may constitute, on a permanent or temporary basis, one or more advisory committees to advise him on such questions relating to the Supreme Court and county courts as he may from time to time refer to them, and must appoint the members of any such committee with regard to their knowledge of the work of the courts and social conditions²⁹. Subject to the consent of the Treasury as to numbers and salaries, he may appoint as officers in his department such auditors and other officers as he may consider necessary for the purpose of controlling the accounts of county courts³⁰.

1 As to the reconstitution of the Supreme Court by the Courts Act 1971 see PARA 601 the text and notes 4-5 post. The Supreme Court is now constituted under the Supreme Court Act 1981: see PARA 601 et seq post.

2 The Lord Chancellor had assumed ministerial responsibility for the higher courts in 1970 (see 226 H of C Official Report (5th series), 7 May 1970, col 603), but the new administrative system did not come into full operation until the commencement of the Courts Act 1971 on 1 January 1972. As to the county courts see PARA 701 et seq post.

3 Eg the county courts were administered directly by the Lord Chancellor's Department and the Lord Chancellor was responsible for the staffing of the Supreme Court.

4 *Report of the Royal Commission on Assizes and Quarter Sessions 1966-69* (Cmnd 4153) PARAS 299-309.

5 See PARA 502 post.

6 See 3 Bl Com (14th Edn) 47; Office of the Lord Chancellor (attributed without warrant to Ellesmere) (1651 Edn) 15. The appointment is made on the advice of the Prime Minister and is a political appointment. As to the use of the Great Seal of the United Kingdom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 909.

7 1 Campbell's Lives of the Lord Chancellors (1845 Edn) 21. The appointment was occasionally formerly made by patent or writ of privy seal, or by suspending the Great Seal around the neck: 1 Campbell's Lives of the Lord Chancellors (1845 Edn) 21.

8 The Supreme Court Act 1981 s 10(3) (as amended) which specifies the qualifications of the higher judiciary (see PARA 515 post) makes no mention of the Lord Chancellor.

9 At the date at which this title states the law, the office of Lord Chancellor was held by Lord Irvine of Lairg who was appointed on 2 May 1997.

10 See PARA 515 et seq post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 485.

11 See eg para 618 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 486.

12 See eg para 505 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 487.

13 See eg para 648 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 488.

14 See PARAS 575-578 post; and CIVIL PROCEDURE vol 11 (2009) PARA 25; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489.

15 See CIVIL PROCEDURE vol 11 (2009) PARA 28.

16 See CIVIL PROCEDURE vol 11 (2009) PARA 87; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489.

17 See the Courts and Legal Services Act 1990 s 18A (as added); and LEGAL PROFESSIONS vol 65 (2008) PARAS 327-328.

18 See the Access to Justice Act 1999 s 1; and LEGAL AID vol 65 (2008) PARA 18. The Lord Chancellor may establish two bodies in place of the Commission, one with functions relating to the Community Legal Service (funding by which replaces the former civil legal aid) and one with functions relating to the Criminal Defence Service (funding by which replaces the former criminal legal aid): see s 2.

19 See further CRIMINAL LAW, EVIDENCE AND PROCEDURE; LEGAL AID vol 65 (2008) PARAS 28-30.

20 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 490.

21 See PARAS 531-534 post.

22 See PARAS 602, 637 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 491.

23 See PARA 365 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 492.

24 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 495.

25 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 497.

26 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 497; MENTAL HEALTH vol 30(2) (Reissue) PARA 674 et seq.

27 At the date at which this title states the law, the Lord Chancellor's Department's website was accessible at www.lcd.gov.uk.

28 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.

29 Courts Act 1971 s 30.

30 County Courts Act 1984 s 131. Their salaries must be paid out of money provided by Parliament: s 132(a).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

501-502 Central Administration, The Lord Chancellor's Department and the Court Service

The Courts Act 2003 Pt 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees (which previously administered magistrates' courts under separate arrangements) are abolished. See further PARA 502A.

501 The Lord Chancellor's Department

TEXT AND NOTES--As to the arrangements to modify the office of Lord Chancellor see Constitutional Reform Act 2005 Pt 2 (ss 2-22); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

TEXT AND NOTES 10-24--As to the duty of the Lord Chancellor to appoint the Head of Civil Justice see PARA 530A; as to the power of the Lord Chancellor to alter judicial titles see PARA 530B; and as to the power of the Lord Chancellor, with Treasury consent, to prescribe fees payable in respect of anything dealt with by the Senior Courts, county courts, and magistrates' courts see the Courts Act 2003 s 92 (amended by Constitutional Reform Act 2005 Sch 4 para 345, Sch 11 para 4).

TEXT AND NOTE 29--Reference to Lord Chancellor is now to the Secretary of State: 1971 Act s 30 (amended by SI 2003/1887). The relevant Secretary of State is the Secretary of State for Constitutional Affairs: see SI 2003/1887 art 4, Sch 1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(1) CENTRAL ADMINISTRATION; THE LORD CHANCELLOR'S DEPARTMENT AND THE COURT SERVICE/502. The Court Service.

502. The Court Service.

The Court Service is an executive agency¹ of the Lord Chancellor's Department². Its role is to provide administrative support to the Court of Appeal³, the High Court⁴, the Crown Court⁵, county courts⁶, the probate service⁷ and those tribunals for which the Lord Chancellor has responsibility⁸.

Under the Courts and Legal Services Act 1990, the Lord Chancellor must prepare and lay before both Houses of Parliament a report as to the business of the Supreme Court⁹ and county courts¹⁰. The annual report and accounts of the Court Service are prepared and laid before Parliament in fulfillment of this obligation¹¹.

The Court Service is subject to quinquennial review¹².

The Court Service maintains an internet site on the World Wide Web which contains information about the courts and judiciary and the legal system¹³.

1 As to executive agencies see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 551.

2 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 496-497. The Court Service was established as an executive agency in April 1995. As to the Lord Chancellor's Department see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 As to the Court of Appeal see PARA 634 et seq post.

4 As to the High Court see PARA 602 et seq post.

5 As to the Crown Court see PARA 621 et seq post.

6 As to county courts see PARA 701 et seq post.

7 The probate service is administered by the Principal Registry of the Family Division: see PARA 644 post.

8 See the *Court Service Annual Report 2000-2001* 'Court Service Structure', available at the date at which this title states the law at www.courtservice.gov.uk. The tribunals for which the Lord Chancellor has direct responsibility are the Immigration Appellate Authorities, the Social Security and Child Support Commissioners, the Pensions Appeal Tribunals, the Special Commissioners of Income Tax, the VAT and Duties Tribunal, the Lands Tribunal and the Transport Tribunal. The following tribunals are also attached to the Court Service: the Financial Services and Markets Tribunal; the Immigration Services Tribunal; and the Independent Schools Tribunal.

The magistrates' courts are not administered by the Court Service but by local committees: see MAGISTRATES. Sir Robin Auld's report *A Review of the Criminal Courts of England and Wales* (2001) recommended the establishment, instead of the present system of the Crown Court and magistrates' courts, of a unified criminal court in three divisions: see Ch 2 para 5. Regardless of whether this recommendation was adopted, he also recommended that the present Court Service and magistrates' courts committees should be replaced by a single centrally funded executive agency as part of the Lord Chancellor's Department responsible for the administration of all courts, civil, criminal and family, with the exception of the Appellate Committee of the House of Lords: see Ch 2 para 5. At the date at which this title states the law, none of these recommendations had been implemented. As to the Appellate Committee of the House of Lords see PARA 367 ante.

9 As to the Supreme Court see PARA 601 post.

10 Courts and Legal Services Act 1990 s 1(12).

11 The *Court Service Annual Report 2000-2001* was published on 29 November 2001 as HC Paper (2000-2001) 356. The report sets out the six strategic objectives of the Lord Chancellor's Department, which include the provision of a fair, swift and effective system of justice and upholding the independence of the judiciary, and the purpose (which is stated to be the delivery of justice), vision and values of the Court Service: see p 6.

12 A quinquennial review of the Court Service was announced by press notice on 30 October 2001. Initial recommendations were to be made by February 2002. The terms of reference of the review were available, at the date at which this title states the law, at www.lcd.gov.uk.

13 At the date at which this title states the law the Court Service website was accessible at www.courtservice.gov.uk.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

501-502 Central Administration, The Lord Chancellor's Department and the Court Service

The Courts Act 2003 Pt 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees (which previously administered magistrates' courts under separate arrangements) are abolished. See further PARA 502A.

502 The Court Service

TEXT AND NOTES 9, 10--Repealed: Courts Act 2003 Sch 8 para 348, Sch 10.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(1) CENTRAL ADMINISTRATION; THE LORD CHANCELLOR'S DEPARTMENT AND THE COURT SERVICE/502A. Maintaining the court system.

502A. Maintaining the court system.

1. The general duty

The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of (1) the Senior Courts¹, (2) the Court of Protection, (3) county courts, and (4) magistrates' courts², and that appropriate services are provided for those courts³. The Lord Chancellor must, within 18 months of 1 April 2005⁴, and afterwards annually, prepare and lay before both Houses of Parliament a report as to the way in which he has discharged his general duty in relation to the courts⁵.

1 In the Courts Act 2003 Pt 1 (ss 1-6) 'the Senior Courts' include the district probate registries: s 1(2)(a); amended by Constitutional Reform Act 2005 Sch 11 para 4.

2 In the Courts Act 2003 Pt 1 'magistrates' court' includes a committee of justices: s 1(2)(b).

3 Ibid s 1(1) (amended by Mental Capacity Act 2005 Sch 6 para 47(2); and the Constitutional Reform Act 2005 Sch 11 para 4). In the 2003 Act Pt 1 references to the Lord Chancellor's general duty in relation to the courts are to his duty under s 1: s 1(3).

4 I.e. the date of commencement of ibid s 1: see SI 2005/910.

5 2003 Act s 1(4).

The Lord Chancellor's functions under s 1 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

2. Court officers, staff and services

The Lord Chancellor may appoint such officers and other staff as appear to him appropriate for the purpose of discharging his general duty in relation to the courts¹. The civil service pension arrangements² for the time being in force apply (with any necessary adaptations) to persons appointed under the above provision³ as they apply to other persons employed in the civil service of the state⁴. The Lord Chancellor may enter into such contracts with other persons for the provision, by them or their sub-contractors, of officers, staff or services as appear to him appropriate for the purpose of discharging his general duty in relation to the courts⁵.

1 Courts Act 2003 s 2(1). Any reference in an enactment to a fines officer is to a person who is appointed by the Lord Chancellor under s 2(1) or provided under a contract made by virtue of s 2(4); and designated as a fines officer by the Lord Chancellor: s 36. The Lord Chancellor's function under s 36 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

2 'The civil service pension arrangements' means (1) the principal civil service pension scheme (within the meaning of the Superannuation Act 1972 s 2) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA

576 et seq), and (2) any other superannuation benefits for which provision is made under or by virtue of the Superannuation Act 1972 s 1 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) for or in respect of persons in employment in the civil service of the state: 2003 Act s 2(3).

3 le appointed under ibid s 2(1).

4 Ibid s 2(2).

5 Ibid s 2(4). Section 2(4) is subject to s 2(5) and (6): s 2(4). The Lord Chancellor may not enter into contracts for the provision of officers and staff to discharge functions which involve making judicial decisions or exercising any judicial discretion: s 2(5). The Lord Chancellor may not enter into contracts for the provision of officers and staff to carry out the administrative work of the courts unless an order made by the Lord Chancellor authorises him to do so: s 2(6). Before making an order under s 2(6) the Lord Chancellor must consult (1) the Lord Chief Justice, (2) the Master of the Rolls, (3) the President of the Queen's Bench Division, (4) the President of the Family Division, and (5) the Chancellor of the High Court, as to what effect (if any) the order might have on the proper and efficient administration of justice: s 2(7) (amended by the 2005 Act Sch 4 para 309(1)). An order the 2003 Act s 2(6) may authorise the Lord Chancellor to enter into contracts for the provision of officers or staff to discharge functions (a) wholly or to the extent specified in the order, (b) generally or in cases or areas specified in the order, and (c) unconditionally or subject to the fulfilment of conditions specified in the order: s 2(8). As to the power of the Lord Chancellor or Lord Chief Justice to make orders under the 2003 Act generally see s 108 (amended by 2005 Act Sch 4 para 348).

3. Provision of accommodation

The Lord Chancellor may provide, equip, maintain and manage such court-houses¹, offices and other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the courts². He may enter into such arrangements for the provision, equipment, maintenance or management of court-houses, offices or other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the courts³.

1 'Court-house' means any place where a court sits, including the precincts of any building in which it sits: Courts Act 2003 s 3(4).

2 Ibid s 3(1).

3 Ibid s 3(2). The powers under (1) the Commissioners of Works Act 1852 s 2 (acquisition by agreement), and (2) the Town and Country Planning Act 1990 s 228(1) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 939), to acquire land necessary for the public service are to be treated as including power to acquire land for the purpose of its provision under arrangements entered into under the 2003 Act s 3(2): s 3(3). See the Courts Act 2003 (Continuing Provision of Court-houses) Regulations 2005, SI 2005/562.

4. Establishment of courts boards

England and Wales is to be divided into areas for each of which there is to be a courts board¹. The areas are to be those specified by an order made by the Lord Chancellor². Each area established by an order³ is to be known by such name as is specified in the order (but subject to the provision below⁴)⁵. The Lord Chancellor may make orders altering⁶ the areas⁷.

Provision is made relating to the constitution and procedure of courts boards⁸.

1 Courts Act 2003 s 4(1).

2 Ibid s 4(2). See Courts Boards Areas Order 2004, SI 2004/1192 (amended by SI 2004/1303, SI 2007/1022). When making an order under the 2003 Act s 4(2) the Lord Chancellor must have regard to the desirability of specifying areas which are the same as (1) the police areas listed in the Police Act 1996 Sch 1 (see POLICE vol 36(1) (2007 Reissue) PARA 136), and (2) the area consisting of the Metropolitan Police District (see POLICE vol 36(1) (2007 Reissue) PARA 137) and the City of London police area (see POLICE vol 36(1) (2007 Reissue) PARA 138): 2003 Act s 4(7). As to the power of the Lord Chancellor or Lord Chief Justice to make orders under the 2003 Act generally see s 108 (amended by Constitutional Reform Act 2005 Sch 4 para 348). See further NOTE 7.

3 Under 2003 Act s 4(2).

4 le subject to *ibid* s 4(4).

5 *Ibid* s 4(3).

6 'Altering', in relation to an area, includes (as well as changing its boundaries) (1) combining it with one or more other areas, (2) dividing it between two or more other areas, and (3) changing its name: *ibid* s 4(5).

7 *Ibid* s 4(4). Before making an order under s 4(4), the Lord Chancellor must consult any courts board affected by the proposed order: s 4(6). Before making any order under s 4(2) or (4), the Lord Chancellor must consult the Lord Chief Justice: s 4(5A) (added by Constitutional Reform Act 2005 Sch 4 para 310). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 4: s 4(7A) (as so added).

8 See 2003 Act s 4(8), Sch 1 (Sch 1 amended by Constitutional Reform Act 2005 Sch 4 para 350); and the Courts Boards (Appointments and Procedure) Regulations 2004, SI 2004/1193 (amended by SI 2006/1016). See also 2005 Act s 19, Sch 7 para 4.

5. Functions of courts boards

Each courts board is under a duty, in accordance with guidance under the following provisions¹ (1) to scrutinise, review and make recommendations about the way in which the Lord Chancellor is discharging his general duty in relation to the courts with which the board is concerned², and (2) for the purposes mentioned in head (1) above, to consider draft and final business plans relating to those courts³. In discharging his general duty in relation to the courts, the Lord Chancellor must give due consideration to recommendations made by the boards⁴. If the Lord Chancellor rejects a recommendation made by a courts board⁵ as a result of the board's consideration of a final business plan, he must give the board his written reasons for so doing⁶. The Lord Chancellor must, after consulting the Lord Chief Justice, prepare and issue the boards with guidance about how they should carry out their functions⁷. The guidance may in particular contain provisions about the procedures to be followed in connection with draft and final business plans⁸. The Lord Chancellor may, after consulting the Lord Chief Justice, from time to time issue the boards with revised guidance and revoke previous guidance⁹. Guidance issued under the above provisions must be laid before both Houses of Parliament¹⁰.

1 le under the Courts Act 2003 s 5.

2 The courts with which a courts board is concerned are (1) the Crown Court, (2) county courts, and (3) magistrates' courts, in the board's area: *ibid* s 5(4).

3 *Ibid* s 5(1).

4 Under *ibid* s 5(1): s 5(2).

5 Under *ibid* s 5(1).

6 *Ibid* s 5(3).

7 le their functions under *ibid* s 5(1): s 5(5) (amended by Constitutional Reform Act 2005 Sch 4 para 311(2)). The Lord Chief Justice may nominate a judicial office holder (as defined in s 109(4)) to exercise his functions under the 2003 Act s 5: s 5(9) (added by 2005 Act Sch 4 para 311(4)).

8 2003 Act s 5(6).

9 *Ibid* s 5(7) (amended by 2005 Act Sch 4 para 311(3)).

10 2003 Act s 5(8).

6. Abolition of magistrates' courts committees

The Greater London Magistrates' Courts Authority (the magistrates' courts committee for Greater London) and all the magistrates' courts committees for areas of England and Wales outside Greater London are abolished¹. In consequence of that (1) England and Wales outside Greater London is no longer divided into magistrates' courts committee areas, and (2) the office of justices' chief executive is abolished².

Provision is made with respect to the transfer of property and staff in consequence of the abolition of magistrates' courts committees³.

1 Courts Act 2003 s 6(1).

2 Ibid s 6(2).

3 See ibid s 6(3), Sch 2. See also Courts Act 2003 (Continuing Provision of Court-houses) Regulations 2005, SI 2005/562; and *R (on the application of the Lord Chancellor) v Chief Land Registrar* [2005] EWHC 1706 (Admin), [2006] QB 795.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

501-502 Central Administration, The Lord Chancellor's Department and the Court Service

The Courts Act 2003 Pt 1 (ss 1-6) brings the administration of the whole court system under the auspices of the Lord Chancellor, and consequentially magistrates' courts committees (which previously administered magistrates' courts under separate arrangements) are abolished. See further PARA 502A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) LOCAL ADMINISTRATION; THE CIRCUITS/503. The circuit administration.

(2) LOCAL ADMINISTRATION; THE CIRCUITS

503. The circuit administration.

For the purpose of administering the Supreme Court¹ and the county courts², England and Wales are divided into six circuits, which are the Midlands and Oxford Circuit, the North Eastern Circuit, the Northern Circuit, the South Eastern Circuit, the Western Circuit and the Wales and Chester Circuit³.

The Lord Chancellor appoints officers for those courts⁴ and the court staff are employed by the Court Service⁵.

The administration of the High Court in London and the London county courts is dealt with by the Supreme Court Group, the Director of which is based in the Royal Courts of Justice. In practice this counts as a separate 'circuit'. Each of the Divisions of the Court of Appeal has its own separate budget and administration⁶.

1 As to the Supreme Court see PARA 601 post.

2 As to the county courts see PARA 701 et seq post.

3 See the Courts and Legal Services Act 1990 s 72(4)(a)-(f). The boundaries of the circuits are determined administratively by the Lord Chancellor and have no statutory basis. The Lord Chancellor has power to direct, after consultation with the Lord Chief Justice, that other areas of England and Wales may comprise the circuits: see s 72(4). As to the Lord Chief Justice see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

Sir Robin Auld's report *A Review of the Criminal Courts of England and Wales* (2001) recommended that for the foreseeable future circuit boundaries and administrations should remain broadly as they are and the courts should be locally managed within the circuits and the 42 criminal justice areas: see Ch 2 para 5.

4 As to court officers see PARAS 647 et seq, 726 et seq post.

5 As to court staff generally see PARA 514 post; and as to the Court Service see PARA 502 ante. Around 9,600 staff are employed in total by the Court Service: see The Lord Chancellor's Department paper *Quinquennial Review of the Court Service* (October 2001) 'The Court Service' available at the date at which this title states the law at www.lcd.gov.uk.

6 As to the Divisions of the Court of Appeal see PARA 634 post. As to the Criminal Appeal Office and the Civil Appeals Office see PARAS 641, 670 post.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(2) LOCAL ADMINISTRATION; THE CIRCUITS/504. The presiding judges and other senior judges on the circuits.

504. The presiding judges and other senior judges on the circuits.

For each of the circuits¹ there must be at least two presiding judges, appointed from among the puisne judges of the High Court². There is also a Senior Presiding Judge for England and Wales, appointed from among the Lords Justices of Appeal³. These appointments are made by the Lord Chief Justice⁴ with the agreement of the Lord Chancellor⁵ and the persons appointed hold office in accordance with the terms of their appointment⁶. Presiding judges assist the Lord Chief Justice in the exercise of statutory powers relating to the distribution of business in the Crown Court⁷.

Additionally, the President of the Family Division⁸, with the agreement of the Lord Chancellor, has appointed at least one Family Division liaison judge to each circuit, and the Vice-Chancellor⁹, with the agreement of the Lord Chancellor, has appointed Chancery supervising judges to each circuit¹⁰.

Senior civil judges, known as 'designated civil judges' have been appointed by the Lord Chancellor to the civil trial centres on each circuit¹¹. Designated civil judges are responsible for arranging the proper distribution of business in the county courts between circuit judges and district judges¹².

1 As to the circuits see PARA 503 ante.

2 Courts and Legal Services Act 1990 s 72(1). As to the High Court judges see PARAS 515, 602, 619 post. In practice there are three presiding judges on the South Eastern Circuit and two on each of the other circuits.

3 Ibid s 72(2). As to the Lords Justices of Appeal see PARA 637 post. At the date at which this title states the law, the Senior Presiding Judge was Judge LJ.

4 As to the Lord Chief Justice see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 Courts and Legal Services Act 1990 s 72(3). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Courts and Legal Services Act 1990 s 72(5).

7 See PARAS 631-632 post.

8 As to the President of the Family Division see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

9 As to the Vice-Chancellor see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

10 See the Lord Chancellor's Department *Senior Judiciary List* (2002) available at the date at which this title states the law at www.lcd.gov.uk. See also *The Chancery Guide* (2000 Edn) Ch 12. There appears to be no specific statutory basis for these appointments. In practice there are two Family Division liaison judges on the South Eastern circuit and one on each of the other circuits; the Vice-Chancellor is the Chancery supervising judge on the South Eastern circuit, and two Chancery judges act as supervising judges on the other circuits.

11 See the Lord Chancellor's Department paper *Designated Civil Judges* (2001) available at the date at which this title states the law at www.lcd.gov.uk.

12 See CIVIL PROCEDURE vol 11 (2009) PARA 62.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

504 The presiding judges and other senior judges on the circuits

TEXT AND NOTES 1-6--The Lord Chancellor's function under the 1990 Act s 72 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(i) Sittings and Vacations/505. Sittings and vacations of the High Court and Court of Appeal.

(3) TERMS, SITTINGS AND LOCATION OF COURTS

(i) Sittings and Vacations

505. Sittings and vacations of the High Court and Court of Appeal.

Sittings of the High Court or of the Court of Appeal may be held, and any other business of the High Court or Court of Appeal may be conducted, at any place in England and Wales¹, but, subject to rules of court², the Lord Chancellor³ may give directions which will determine the places at which the High Court or Court of Appeal sits outside the Royal Courts of Justice⁴, and the days and times when the court sits at any such place⁵.

There are four sittings of the Court of Appeal and of the High Court in every year, namely:

- 62 (1) the Michaelmas sittings which begin on 1 October and end on 21 December;
- 63 (2) the Hilary sittings which begin on 11 January and end on the Wednesday before Easter Sunday;
- 64 (3) the Easter sittings which begin on the second Tuesday after Easter Sunday and end on the Friday before the spring holiday⁶; and
- 65 (4) the Trinity sittings which begin on the second Tuesday after the spring holiday and end on 31 July⁷.

These provisions have been modified in relation to the year 2002 only⁸.

Rules of court may also make provision for regulating the vacations to be observed by the Court of Appeal and the High Court and in the offices of those courts⁹ and may in particular provide (a) for securing such sittings of the Civil Division of the Court of Appeal during vacation as the Master of the Rolls¹⁰ may determine with the concurrence of the Lord Chancellor¹¹; and (b) for securing such sittings of any Division of the High Court¹² during vacation as the senior judge¹³ of that Division may with the like concurrence determine¹⁴. Rules of court must also provide for securing sittings of the Criminal Division of the Court of Appeal during vacation if necessary¹⁵. The Lord Chief Justice¹⁶ determines the days on which the Criminal Division will, if necessary, sit during vacations; and the court sits on those days in accordance with arrangements made by the Lord Chief Justice after consultation with the Master of the Rolls¹⁷.

1 Supreme Court Act 1981 ss 57(1), 71(1). See eg *Ford v GKR Construction Ltd* [2000] 1 All ER 802, [2000] 1 WLR 1397, CA (Court of Appeal sitting outside the Royal Courts of Justice, in Cardiff); *Re B (adult: refusal of medical treatment)* [2002] EWHC 429 (Fam), [2002] 2 All ER 449, [2002] All ER (D) 362 (Mar) (Family Division hearing evidence in hospital room with video link to Royal Courts of Justice; legal argument taking place at Royal Courts of Justice with video link to hospital room).

2 As to rules of court see PARAS 575-578 post.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Supreme Court Act 1981 ss 57(1)(a), 71(2)(a).

5 Ibid ss 57(1)(b), 71(2)(b). As to the places in which the High Court may sit outside London see further PARA 511 post; and as to district registries see PARA 646 post.

6 For these purposes, 'spring holiday' means the bank holiday falling on the last Monday in May or any day appointed instead of that day under the Banking and Financial Dealings Act 1971 s 1(2): *Practice Direction--Court Sittings* PD 39B para 1.1(2). As to bank holidays see further TIME vol 97 (2010) PARA 321.

7 *Practice Direction--Court Sittings* PD 39B para 1.1.

8 In 2002 only, the Easter sittings of the Court of Appeal and the High Court ended on Friday 31 May 2002 (the Friday before the spring holiday which was appointed to be on Tuesday 4 June 2002 in place of the last Monday in May); and the Trinity sittings began on Tuesday 11 June 2002 (the first Tuesday after the spring holiday). These changes were made following the appointment of Monday 3 June 2002 to be a bank holiday to mark Her Majesty's Golden Jubilee, by Royal Proclamation pursuant to the Banking and Financial Dealings Act 1971 s 1(2), (3): *Practice Direction--Court Sittings in 2002* PD 39B (sic).

9 Supreme Court Act 1981 ss 57(2), 71(3). In relation to the High Court and its offices, different provision may be made for different parts of the country: s 71(5).

10 As to the Master of the Rolls see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

11 Supreme Court Act 1981 s 57(4)(a). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

12 As to the Divisions of the High Court see PARA 603 post.

13 As to the senior judges of the Divisions see PARA 603 post.

14 Supreme Court Act 1981 s 71(4)(a).

15 Ibid s 57(4)(c).

16 As to the Lord Chief Justice see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

17 Criminal Appeal Rules 1968, SI 1968/1262, r 17.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

505 Sittings and vacations of the High Court and Court of Appeal

TEXT AND NOTES 1-15--1981 Act ss 57, 71 amended: Constitutional Reform Act 2005 Sch 4 paras 128, 132. See further 2005 Act s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 17--SI 1968/1262 r 17 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), r 68.24.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(i) Sittings and Vacations/506. Vacation judges in High Court and Court of Appeal.

506. Vacation judges in High Court and Court of Appeal.

Rules of court¹ must provide for the transaction during vacation by judges of the Court of Appeal and of the High Court of all such business in the Civil Division of the Court of Appeal and in the High Court as may require to be immediately or promptly transacted².

In the High Court, the senior judge of each Division³ has the power to direct that one or more judges of each Division of the High Court should sit in vacation on such days as may be directed, to hear such cases, claims, matters or applications requiring immediately or promptly to be heard and to hear other cases, claims, matters or applications if the senior judge of that Division determines that sittings are necessary for that purpose⁴. Any party to a claim or matter may at any time apply to the court for an order that such claim or matter be heard in vacation and, if the court is satisfied that the claim or matter requires to be immediately or promptly heard, it may make an order accordingly and fix a date for the hearing⁵. Any judge of the High Court may hear such other cases, claims, matters or applications in vacation as the court may direct⁶. The above does not, however, apply outside the Royal Courts of Justice. The senior presiding judge of each circuit⁷, with the concurrence of the senior presiding judge, and the Vice-Chancellor of the County Palatine of Lancaster and the Chancery supervising judge for Birmingham, Bristol and Cardiff, with the concurrence of the Vice-Chancellor, may make such arrangements for vacation sittings in the courts for which they are respectively responsible as they think desirable⁸.

Subject to the discretion of the judge, any appeal and any application normally made to a civil judge may be made in the month of September⁹. In the month of August, save with the permission of a judge or under arrangements for vacation sittings in courts outside the Royal Courts of Justice, appeals to a judge will be limited, and only applications of real urgency will be dealt with¹⁰.

Arrangements for the Criminal Division of the Court of Appeal to sit in vacations have already been discussed¹¹.

1 As to rules of court see PARAS 575-578 post.

2 Supreme Court Act 1981 ss 57(4)(b), 71(4)(b). As to term times see PARA 505 ante; and as to office hours in the Central Office of the Supreme Court see PARA 507 post. In practice, at least one court of the Civil Division of the Court of Appeal sits throughout August and September to deal with ordinary as well as urgent vacation business; in the other vacations there is a rota of Lords Justices who are available to deal with urgent appeals and applications. As to the Civil Division of the Court of Appeal see PARAS 635, 639 post.

3 As to the Divisions of the High Court and the senior judges of those Divisions see PARA 603 post.

4 See *Practice Direction--Court Sittings* PD 39B para 2.1(1).

5 *Practice Direction--Court Sittings* PD 39B para 2.1(2).

6 *Practice Direction--Court Sittings* PD 39B para 2.1(3).

7 As to the senior presiding judges see PARA 504 ante.

8 *Practice Direction--Court Sittings* PD 39B para 2.2.

9 *Practice Direction--Court Sittings* PD 39B para 2.3(1).

10 See *Practice Direction--Court Sittings* PD 39B para 2.3(2); and CIVIL PROCEDURE vol 11 (2009) PARA 65.

11 See the Criminal Appeal Rules 1968, SI 1968/1262, r 17; and PARA 505 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

506 Vacation judges in High Court and Court of Appeal

NOTE 11--SI 1968/1262 r 17 replaced by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'), r 68.24.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(i) Sittings and Vacations/507. Supreme Court offices and district registries.

507. Supreme Court offices and district registries.

The offices of the Supreme Court¹ must be open on every day of the year except:

- 66 (1) Saturdays and Sundays;
- 67 (2) Good Friday and the day after Easter Monday;
- 68 (3) Christmas Day and, if that day is a Friday or Saturday, then 28 December;
- 69 (4) bank holidays in England and Wales²; and
- 70 (5) such other days as the Lord Chancellor³, with the concurrence of the Heads of Division⁴, may direct⁵.

Every district registry⁶ must be open on the days and during the hours that the Lord Chancellor from time to time directs and, in the absence of any such directions, must be open on the same days and during the same hours as the county court offices of which it forms part are open⁷.

1 As to the offices of the Supreme Court see PARA 641 et seq post; and CIVIL PROCEDURE vol 11 (2009) PARA 51.

2 Ie under the Banking and Financial Dealings Act 1971: see TIME vol 97 (2010) PARA 321.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Ie the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor: see *Practice Direction--Court Offices* PD 2A para 2.1(1). As to the Lord Chief Justice, the Master of the Rolls and the Vice-Chancellor see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303; and as to the President of the Family Division see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 *Practice Direction--Court Offices* PD 2A para 2.1(1). The hours during which the offices of the Supreme Court must be open to the public are as follows: (a) at the Principal Probate Registry at First Avenue House, 42-49 High Holborn, London WC1V 6HA, from 10 am to 4.30 pm; (b) at the Supreme Court offices at the Royal Courts of Justice (including the Technology and Construction Court Registry in St Dunstan's House, 133-137 Fetter Lane, London EC4A 1HD), from 10 am to 4.30 pm, except during the month of August in every year, when the hours are from 10 am to 2.30 pm; (c) such other hours as the Lord Chancellor, with the concurrence of the Heads of Division, may from time to time direct: para 2.1(2).

6 As to district registries see PARA 646 post.

7 *Practice Direction--Court Offices* PD 2A para 2.1(3). As to the opening hours of county court offices see PARA 509 post.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

507 [Senior Courts] offices and district registries

NOTE 5--*Practice Direction--Court Offices* PD 2A para 2.1(2) substituted, and further amended, as follows: The hours during which the offices of the Supreme Court at the Royal Courts of Justice and at the Principal Registry of the Family Division at First Avenue House, 42-49 High Holborn, London WC1V 6NP must now be open to the public are: (1) from 10 am to 4.30 pm; (2) such other hours as the Lord Chancellor, with the concurrence of the Heads of Division, may from time to time direct.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(i) Sittings and Vacations/508. The Crown Court.

508. The Crown Court.

The days and times when the Crown Court is to sit at any place are determined in accordance with directions given by or on behalf of the Lord Chancellor¹. Such directions are in practice normally given on behalf of the Lord Chancellor by the circuit administrator of the circuit concerned².

1 See the Supreme Court Act 1981 s 78(3); and PARA 622 post.

2 See PARA 503 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(i) Sittings and Vacations/509. County courts.

509. County courts.

In any county court district¹ the places at which the court sits², and the days and times when the court sits at any place, are to be determined in accordance with directions given by or on behalf of the Lord Chancellor³. A judge⁴ may from time to time adjourn any court held by him, and a district judge may from time to time adjourn any court held by him, or, in the absence of the judge, any court to be held by the judge⁵.

Every county court office⁶, or if a court has two or more offices at least one of those offices, must be open on every day of the year except:

- 71 (1) Saturdays and Sundays;
- 72 (2) the day before Good Friday from noon onwards and Good Friday;
- 73 (3) the Tuesday after the Spring bank holiday;
- 74 (4) Christmas Day and, if that day is a Friday or Saturday, then 28 December;
- 75 (5) bank holidays⁷; and
- 76 (6) such other days as the Lord Chancellor may direct⁸.

1 As to county court districts see PARA 707 post.

2 References in the County Courts Act 1984 to sittings of the court include references to sittings by any district judge in pursuance of any provision contained in, or made under, that Act: s 3(4). As to district judges in county courts see PARA 728 post.

3 Ibid s 3(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 As to county court judges see PARA 724 post.

5 County Courts Act 1984 s 3(2).

6 As to county court offices see PARA 743 post.

7 For these purposes, 'bank holiday' means a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 and 'spring bank holiday' means the bank holiday on the last Monday in May or any day appointed instead of that day under s 1(2): *Practice Direction--Court Offices* PD 2A para 3.2(2). As to bank holidays see further TIME vol 97 (2010) PARA 321.

8 *Practice Direction--Court Offices* PD 2A para 3.2(1).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

509 County courts

TEXT AND NOTES 1-5--County Courts Act 1984 s 3 amended: Constitutional Reform Act 2005 Sch 4 para 162.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(ii) Location of Courts/510. The Court of Appeal.

(ii) Location of Courts

510. The Court of Appeal.

Although the Court of Appeal normally sits at the Royal Courts of Justice in London, a court of either the Civil Division or the Criminal Division may sit at any place in England and Wales¹.

¹ See the Supreme Court Act 1981 s 57(1); and PARA 505 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(ii) Location of Courts/511. The High Court and the Crown Court.

511. The High Court and the Crown Court.

The places at which the High Court sits outside the Royal Courts of Justice in London are determined in accordance with directions given by the Lord Chancellor¹, as are the places at which sittings of the Crown Court take place².

Acting under these powers the Lord Chancellor has given general directions as to the centres at which sittings of the High Court and of the Crown Court are normally to be held. For this purpose he has divided the Crown Court centres into three categories, described as tiers, according to the seriousness of the offences which may be tried there⁴. There are also some combined court centres, that is centres housing both the Crown Court and a county court; combined court centres are also divided into tiers⁵. The first tier centres are normally served by the more senior members of the judiciary and also deal with High Court civil and family business.

Each circuit has two or more appeal centres where appeals to the High Court may be filed⁶ and most also have further centres where appeals may be heard but not filed⁷.

There is, however, no limitation on the places where the High Court or the Crown Court may sit, and the statutory powers enable special directions to be given at any time on behalf of the Lord Chancellor, providing for sittings to be held elsewhere.

1 See the Supreme Court Act 1981 s 71(2)(a); and PARA 505 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 See *ibid* s 78(3); and PARA 622 post.

4 As to the classification of offences see PARA 631 post.

5 Eg on the Wales and Chester circuit, the following are Crown Court centres: Cardiff, Carnarfon, Chester, Mold, Swansea (tier 1); Carmarthen, Newport (Gwent) and Welshpool (tier 2); and Dolgellau, Haverfordwest and Knutsford (tier 3). The following are combined court centres on that circuit: Merthyr Tydfil (tier 2) and Warrington (tier 3): see map of the Wales and Chester circuit displayed, at the date at which this title states the law, on the Court Service website at www.courtservice.gov.uk. The Lord Chancellor's Department announced on 10 April 2002 that a consultation process was beginning on the proposed closure of the Crown Court building at Knutsford.

As at 12 September 2000, there were Crown Court centres at: Aylesbury; Birmingham; Blackfriars; Bournemouth; Bristol; Cambridge; Cardiff; the Central Criminal Court ('Old Bailey': see PARA 624 post); Chelmsford; Chester; Doncaster; Durham; Gloucester; Guildford; Harrow; Inner London (at Newington Causeway); Ipswich; Isleworth; Kingston-upon-Thames; Leicester; Luton; Manchester (at Crown Square and at Minshull Street); Middlesex Guildhall (at Broad Sanctuary, London SW1P 3BB); Newport (Gwent); Newport (IOW); Nottingham; Plymouth; Reading; Shrewsbury; Snaresbrook; Southwark; St Albans; Swansea; Taunton; Wood Green; Woolwich; and York; and combined court centres at: Basildon; Bolton; Bradford; Burnley; Canterbury; Carlisle; Chichester; Coventry; Croydon; Derby; Dorchester (combined with Weymouth); Exeter; Great Grimsby; Kingston-upon-Hull; Leeds; Lewes; Lincoln; Liverpool; Maidstone; Merthyr Tydfil; Newcastle-upon-Tyne; Northampton; Norwich; Oxford; Peterborough; Portsmouth; Preston; Salisbury; Sheffield; Southampton; Stafford; Stoke-on-Trent; Swindon; Teeside; Truro; Warrington; Warwick; Winchester; Wolverhampton; and Worcester: see the list of Crown Court addresses available at the date at which this title states the law on the Court Service website at www.courtservice.gov.uk. As to the location of county courts see PARA 512 post.

6 As to appeals to the High Court see generally CIVIL PROCEDURE vol 12 (2009) PARA 1658 et seq. The appeal centres are as follows: (1) Midland and Oxford Circuit, at Birmingham and Nottingham; (2) North Eastern Circuit, at Leeds, Newcastle and Sheffield; (3) Northern Circuit, at Liverpool, Manchester and Preston; (4) Wales and Chester Circuit, at Cardiff, Chester and Swansea; (5) Western Circuit, at Bristol, Exeter and Winchester; (6) South Eastern Circuit, at the Royal Courts of Justice for Central London and at Lewes, Luton, Norwich and Reading.

7 The hearing only centres are as follows: (1) Midland and Oxford Circuit, at Oxford, Lincoln, Leicester, Northampton and Stafford; (2) North Eastern Circuit, at Teesside; (3) Northern Circuit, at Carlisle; (4) Wales and Chester Circuit has no such centres at the date at which this title states the law; (5) Western Circuit, at Plymouth and Truro; (6) South Eastern Circuit, at Chelmsford, Maidstone and St Albans.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(3) TERMS, SITTINGS AND LOCATION OF COURTS/(ii) Location of Courts/512. County courts.

512. County courts.

County courts are held for one or more places in each county court district¹. In any such district the places at which the court sits are to be determined in accordance with directions given by or on behalf of the Lord Chancellor². Certain court centres are combined Crown Court Centres and county courts³.

Where in any place in which a county court is held there is a town hall, courthouse or other public building belonging to any local or other public authority, that building, with all necessary rooms, furniture and fittings in it, must be used for the purpose of holding the court, without any charge for rent or other payment, except reasonable and necessary charges for lighting, warming and cleaning the building when used for that purpose⁴; but the sitting of the court⁵ must be arranged so as not to interfere with the business of the authority usually transacted in the building or with the purpose for which the building may be used by virtue of any local Act⁶.

County court districts are discussed in detail in a later section of this title⁷.

¹ See the County Courts Act 1984 s 1(1), (3) (as amended); and PARA 707 post. As to the City of London see PARA 708 post.

² See *ibid* s 3(1); and PARA 509 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

³ See PARA 511 note 5 ante.

⁴ County Courts Act 1984 s 4(1). Section 4 does not apply to any place where a building was specially erected for a county court before 1 January 1889, the date on which the County Courts Act 1888 (repealed) came into operation: see the County Courts Act 1984 s 4(3).

⁵ *Ie* including sittings by any district judge: see *ibid* s 3(4); and PARA 509 ante.

⁶ *Ibid* s 4(2).

⁷ See PARAS 707-708 post.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) COURT OFFICES, OFFICERS AND STAFF; IN GENERAL/513. Provision of accommodation.

(4) COURT OFFICES, OFFICERS AND STAFF; IN GENERAL

513. Provision of accommodation.

The Secretary of State¹ may with the approval of the Treasury provide, equip, maintain and manage such courts, offices, buildings, judges' lodgings and other accommodation as may be necessary or desirable for carrying on the business of the Supreme Court² and county courts³. Any land which is required to discharge these duties is land necessary for the public service which may be acquired by agreement or compulsorily⁴.

In discharging his duties under these provisions the Secretary of State may, if he thinks fit, enter into arrangements with a local or other public authority for the provision of accommodation to be used in part for these purposes and in part for other purposes, including in particular the sittings of a magistrates' court⁵.

Transitional provision was made under the Courts Act 1971 for the premises previously used by the courts abolished by that Act to be made available for Supreme Court or county court business⁶ and for their acquisition by the Secretary of State either by agreement or by compulsory purchase⁷. Provision was also made for judges' lodgings previously provided by local authorities to be made available for a transitional period and to be at the disposal of all judges⁸. These transitional provisions did not, however, apply to the City of London⁹.

The offices of the Supreme Court and county courts are discussed in detail below¹⁰.

1 The reference to the Secretary of State in the text was substituted by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 6(1), Schedule para 4, to refer to that Secretary of State; however, functions of the Secretary of State for the Environment, Transport and the Regions were subsequently transferred either to the Secretary of State for Transport, Local Government and the Regions or to the Secretary of State for the Environment, Food and Rural Affairs: see the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568. On 29 May 2002 a further reorganisation of government departments took place whereby responsibility for Local Government and the Regions was transferred to the Deputy Prime Minister and the Secretary of State for Transport, Local Government and the Regions became the Secretary of State for Transport.

2 As to the Supreme Court of England and Wales see PARA 601 et seq post.

3 Courts Act 1971 s 28(1) (as amended: see note 1 supra). As to county courts see PARA 701 et seq post.

4 See *ibid* s 28(2) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 25), which provides that the expression 'land necessary for the public service' in the Commissioners of Works Act 1852 s 2 (as amended) (acquisition by agreement) and in the Town and Country Planning Act 1990 s 228(1) (as amended) (power of Secretary of State to acquire compulsorily land necessary for the public service) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 939) includes any land under the Courts Act 1971 s 28 (as amended).

5 *Ibid* s 28(3) (as amended: see note 1 supra).

6 See *ibid* s 28(4), Sch 3 para 1. As to the courts abolished by the Courts Act 1971 see PARA 606, 708, 854 post.

7 See *ibid* Sch 3 paras 2-8, 10.

8 See *ibid* Sch 3 para 9.

9 See *ibid* Sch 3 para 11. As to accommodation in the City of London see s 29; and PARAS 624, 708 post.

10 See PARAS 641-646, 743 post.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

513-514 Court Offices, Officers and Staff; in general

Courts Act 1971 ss 27, 28, Sch 3 repealed: Courts Act 2003 Sch 8 para 139, Sch 10.

The powers of court security officers in magistrates' courts now extend to all courts: see Pt 4 (ss 51-57); and MAGISTRATES vol 29(2) (Reissue) PARA 619.

For further provision relating to staff and resources see ss 48-51; and PARA 601D.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(4) COURT OFFICES, OFFICERS AND STAFF; IN GENERAL/514.
Administrative and other court staff; in general.

514. Administrative and other court staff; in general.

The Lord Chancellor¹ may, with the concurrence of the Treasury as to numbers and salaries, appoint such officers and other staff for the Supreme Court² and county courts³ as appear to him appropriate for the following purposes, namely:

- 77 (1) maintaining an administrative court service;
- 78 (2) discharging any functions in those courts conferred by or under this or any other Act on officers so appointed; and
- 79 (3) generally carrying out the administrative work of those courts⁴.

If and to the extent that an order made by the Lord Chancellor so provides, the Lord Chancellor may enter into contracts with other persons for the provision for these purposes, whether by those persons or by sub-contractors of theirs, of officers and staff for the Supreme Court and county courts⁵; but no such order may authorise the contracting out⁶ of any functions the discharge of which would constitute:

- 80 (a) making judicial decisions or advising persons making such decisions⁷;
- 81 (b) exercising any judicial discretion or advising persons exercising any such discretion⁸; or

82 (c) exercising any power of arrest⁹.

Before making such an order, the Lord Chancellor must consult with the senior judges¹⁰ as to what effect (if any) the order might have on the proper and efficient administration of justice¹¹.

In the exercise of his functions set out above, the Lord Chancellor has made the Contracting Out of Functions (Court Staff) Order 1999¹², which came into force on 26 April 1999¹³, and which authorises him to enter into a contract for the provision, for the statutory purposes¹⁴, of officers and staff to provide information technology related services in the county courts¹⁵. He has also made the Contracting Out (Administrative and Other Court Staff) Order 2001¹⁶, which came into force on 10 December 2001¹⁷ and which authorises him to enter into contracts with such persons as he sees fit for the provision, for the statutory purposes¹⁸, by those persons or by sub-contractors of theirs, of officers and staff for the Supreme Court and for county courts in England and Wales¹⁹.

The appointment to specific offices and other positions in the Supreme Court and county courts is discussed in detail below²⁰.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 For these purposes, 'the Supreme Court' includes the district probate registries: Courts Act 1971 s 27(9) (s 27 substituted by the Deregulation and Contracting Out Act 1994 s 76, Sch 16 para 2). As to the Supreme Court see PARA 601 et seq post; and as to the district probate registries see PARA 645 post.

3 As to county court see PARA 701 et seq post.

4 Courts Act 1971 s 27(1) (as substituted: see note 2 supra). The principal civil service pension scheme within the meaning of the Superannuation Act 1972 s 2 (as amended) and for the time being in force applies, with the necessary adaptations, to officers and staff so appointed as it applies to other persons employed in the civil service of the State: Courts Act 1971 s 27(2) (as so substituted). See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 576.

5 Ibid s 27(3) (as substituted: see note 2 supra).

6 For these purposes, references to the contracting out of any functions are references to the Lord Chancellor entering into contracts for the provision of officers and staff for the purpose of discharging those functions: ibid s 27(8) (as substituted: see note 2 supra). An order under s 27(3) (as so substituted) may authorise the contracting out of any functions: (1) either wholly or to such extent as may be specified in the order; (2) either generally or in such cases or areas as may be so specified; and (3) either unconditionally or subject to the fulfilment of such conditions as may be so specified: s 27(5) (as so substituted). Such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 27(7) (as so substituted).

7 As to judicial decisions see PARA 301 ante.

8 As to the exercise of judicial discretion see PARA 321 ante; and see eg CIVIL PROCEDURE vol 11 (2009) PARA 246 et seq (case management).

9 Courts Act 1971 s 27(4) (as substituted: see note 2 supra).

10 For these purposes, 'the senior judges' means the Lord Chief Justice, the Master of the Rolls, the Vice-Chancellor and the President of the Family Division: ibid s 27(9) (as substituted: see note 2 supra). As to the Lord Chief Justice, the Master of the Rolls and the Vice-Chancellor see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303; and as to the President of the Family Division see PARA 515 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

11 Courts Act 1971 s 27(6) (as substituted: see note 2 supra).

12 ie the Contracting Out of Functions (Court Staff) Order 1999, SI 1999/1013: see the text and notes 13-15 infra.

13 Ibid art 1.

14 le for the purposes mentioned in the Courts Act 1971 s 27(1) (as substituted): see the text and notes 1-4 *supra*.

15 Contracting Out of Functions (Court Staff) Order 1999, SI 1999/1013, art 2. As to the contracting out of functions relating to certain tribunals see the Deregulation and Contracting Out Act 1994 s 69; and the Contracting Out of Functions (Tribunal Staff) Order 2001, SI 2001/3539.

16 le the Contracting Out (Administrative and Other Court Staff) Order 2001, SI 2001/3698: see the text and notes 17-19 *infra*.

17 *Ibid* art 1.

18 See note 14 *supra*.

19 Contracting Out (Administrative and Other Court Staff) Order 2001, SI 2001/3698, art 2. The Lord Chancellor also may enter into contracts with such persons as he sees fit for the provision by those persons or by sub-contractors of theirs of officers and staff for carrying out the administrative work of the Commissioners for the special purposes of the Income Tax Acts (see PARA 817 *post*) and, in England and Wales, any tribunal constituted in accordance with the Value Added Tax Act 1994 s 82(1), Sch 12 (see PARA 816 *post*): Contracting Out (Administrative and Other Court Staff) Order 2001, SI 2001/3698, art 3. See further INCOME TAXATION; VALUE ADDED TAX.

20 See PARAS 647 *et seq*, 726 *et seq post*.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

513-514 Court Offices, Officers and Staff; in general

Courts Act 1971 ss 27, 28, Sch 3 repealed: Courts Act 2003 Sch 8 para 139, Sch 10.

The powers of court security officers in magistrates' courts now extend to all courts: see Pt 4 (ss 51-57); and MAGISTRATES vol 29(2) (Reissue) PARA 619.

For further provision relating to staff and resources see ss 48-51; and PARA 601D.

514 Administrative and other court staff; in general

TEXT AND NOTES 1-11--1971 Act s 27 repealed: Courts Act 2003 Sch 8 para 139(a), Sch 10.

NOTE 15--SI 2001/3539 revoked: SI 2009/1307.

TEXT AND NOTE 19--The Lord Chancellor may also enter into such contracts for the provision of staff for the Court of Protection and magistrates' courts: SI 2001/3698 art 2 (substituted by SI 2008/2791).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/515. Appointment of judges of the Supreme Court.

(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS

(i) Judicial Appointments and Salaries

A. JUDGES OF THE SUPREME COURT

515. Appointment of judges of the Supreme Court.

Whenever the office of Lord Chief Justice¹, Master of the Rolls², President of the Family Division³ or Vice-Chancellor⁴ is vacant, Her Majesty may by letters patent appoint a qualified person to that office⁵. No person is qualified for such an appointment unless he is qualified for appointment as a Lord Justice of Appeal⁶ or is a judge of the Court of Appeal⁷.

Subject to the limits on numbers for the time being imposed by statute⁸, Her Majesty may from time to time by letters patent appoint qualified persons as Lords Justices of Appeal or as puisne judges⁹ of the High Court¹⁰. No person is qualified for appointment as a Lord Justice of Appeal unless he either has a 10 year High Court qualification¹¹ within the meaning of the Courts and Legal Services Act 1990 or is a judge of the High Court¹²; and no person is qualified for appointment as a puisne judge of the High Court unless he either he has such a 10 year High Court qualification or is a circuit judge¹³ who has held that office for at least two years¹⁴.

Every person appointed to an office mentioned above or as a Lord Justice of Appeal or puisne judge of the High Court must, as soon as may be after his acceptance of office, take the oath of allegiance and the judicial oath¹⁵ in the presence of the Lord Chancellor¹⁶.

The Lord Chancellor may appoint one of the ordinary judges of the Court of Appeal as vice-president of the Queen's Bench Division¹⁷; and any person so appointed holds that office in accordance with the terms of his appointment¹⁸.

Judges of the Supreme Court hold qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993¹⁹. They are barred from legal practice²⁰ and disqualified for membership of the House of Commons²¹.

1 As to the Lord Chief Justice see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

2 As to the Master of the Rolls see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

3 As to the President of the Family Division see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 As to the Vice-Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 Supreme Court Act 1981 s 10(1).

6 As to Lords Justices of Appeal see PARA 637 post; and as to their qualification for appointment see the text and notes 11-12 infra.

7 Supreme Court Act 1981 s 10(3)(a). As to judges of the Court of Appeal see PARA 637 post.

8 Ie the limits imposed by ibid s 2(1) (as amended) (see PARA 637 post) and s 4(1) (as amended) (see PARA 602 post): s 10(2).

9 As to the puisne judges of the High Court see PARA 602 post; and to their qualification for appointment see the text and notes 13-14 infra.

10 Ibid s 10(2).

11 A person has a 'High Court qualification' if he has a right of audience in relation to all proceedings in the High Court: Courts and Legal Services Act 1990 s 71(3)(b). Any reference in any enactment, measure, or statutory instrument to a person having such a qualification of a particular number of years' length is to be construed as a reference to a person who for the time being has had that qualification, and has had it for a period (which need not be continuous) of at least that number of years; but any period during which a person had a right of audience but was, as a result of disciplinary proceedings, prevented by his professional body from exercising it, does not count towards that period: see s 71(5), (6) (s 71(6) substituted by the Access to Justice Act 1999 s 43, Sch 6 paras 4, 9). As to rights of audience see PARA 331 ante; and see further LEGAL PROFESSIONS.

12 Supreme Court Act 1981 s 10(3)(b) (s 10(3)(b), (c) amended by the Courts and Legal Services Act 1990 s 71(1)). As to the judges of the High Court see PARAS 602, 619 post.

13 As to circuit judges see PARA 522 post.

14 Supreme Court Act 1981 s 10(3)(c) (as amended: see note 12 supra).

15 As set out in the Promissory Oaths Act 1868: see ss 2, 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

16 Supreme Court Act 1981 s 10(4).

17 As to the Queen's Bench Division see PARA 613 post.

18 Access to Justice Act 1999 s 69(1).

19 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt I; and PARA 539 post.

20 See the Courts and Legal Services Act 1990 s 75, Sch 11.

21 See the House of Commons Disqualification Act 1975 s 1(1)(a), Sch 1 Pt I; and PARLIAMENT vol 78 (2010) PARA 908.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

515 Appointment of judges of [Senior Courts]

TEXT AND NOTES--As to the Judicial Appointments Commission and the Judicial Appointments and Conduct Ombudsman see PARA 515A; and for further provision as to judicial appointments see PARA 515B.

TEXT AND NOTES 1-16--1981 Act s 10 further amended: Constitutional Reform Act 2005 Sch 4 para 122.

TEXT AND NOTE 1--As to the functions of the Lord Chief Justice during vacancy or incapacity see PARA 515C.

NOTE 12--1981 Act s 10(3)(b), (c) further amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(2).

TEXT AND NOTE 18--1999 Act s 69(1) amended, s 69(1A) added: 2005 Act Sch 4 para 282.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/515A. Commission and Ombudsman.

515A. Commission and Ombudsman.

1. The Judicial Appointments Commission

There is to be a body corporate called the Judicial Appointments Commission¹. Provision is made about the Commission².

¹ Constitutional Reform Act 2005 s 61(1).

² See *ibid* s 61(2), Sch 12 (amended by Tribunals, Courts and Enforcement Act 2007 Sch 8 para 65) (Sch 8 para 65 partly in force: SI 2007/2709) which makes detailed provision relating to the Commissioners and the Commission.

2. Judicial Appointments and Conduct Ombudsman

There is to be a Judicial Appointments and Conduct Ombudsman¹. Detailed provision is made about the Ombudsman².

1 Constitutional Reform Act 2005 s 62(1).

2 See *ibid* s 62(2), Sch 13.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

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As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/515B. Appointments.

515B. Appointments.

1. Merit and good character

The following provisions¹ apply to any selection under Part 4 of the Constitutional Reform Act 2005² by the Commission³ or a selection panel ('the selecting body')⁴. Selection must be solely on merit⁵. A person must not be selected unless the selecting body is satisfied that he is of good character⁶.

- 1 Ie the Constitutional Reform Act 2005 s 63(2), (3).
- 2 Ie ibid ss 61-122. As to selection under Pt 4 see further s 98(7); and PARA 515B.29.
- 3 In ibid Pt 4 the 'Commission' means the Judicial Appointments Commission (see PARA 515A.1): s 122.
- 4 Ibid s 63(1).
- 5 Ibid s 63(2).
- 6 Ibid s 63(3).

2. Encouragement of diversity

The Commission, in performing its functions¹ under Part 4 of the Constitutional Reform Act 2005², must have regard to the need to encourage diversity in the range of persons available for selection for appointments³.

- 1 In the Constitutional Reform Act 2005 'functions' includes powers and duties: s 142.
- 2 Ie ibid ss 61-122.
- 3 Ibid s 64(1). In Pt 4 'appoint' includes nominate or designate (and 'appointment' is to be read accordingly): s 122. Section 64 is subject to s 63 (see PARA 515B.1): s 64(2).

3. Guidance about procedures

The Lord Chancellor may issue guidance about procedures for the performance by the Commission or a selection panel of its functions of (1) identifying persons willing to be considered for selection under Part 4 of the Constitutional Reform Act 2005¹, and (2) assessing such persons for the purposes of selection². The guidance may, among other things, relate to consultation or other steps in determining such procedures³. The purposes for which guidance may be issued under these provisions⁴ include the encouragement of diversity in the range of persons available for selection⁵. The Commission and any selection panel must have regard to the guidance in matters to which it relates⁶.

Before issuing any guidance⁷ the Lord Chancellor must (a) consult the Lord Chief Justice⁸; (b) after doing so, lay a draft of the proposed guidance before each House of Parliament⁹. If the draft is approved by a resolution of each House of Parliament within the 40-day period¹⁰ the Lord Chancellor must issue the guidance in the form of the draft¹¹. In any other case the Lord

Chancellor must take no further steps in relation to the proposed guidance¹². Guidance comes into force on such date as the Lord Chancellor may appoint by order¹³. The Lord Chancellor may (i) from time to time revise the whole or part of any guidance and re-issue it; (ii) after consulting the Lord Chief Justice, by order revoke any guidance¹⁴.

1 Ie the Constitutional Reform Act 2005 ss 61-122.

2 Ibid s 65(1).

3 Ibid s 65(2).

4 Ie ibid s 65.

5 Ibid s 65(3).

6 Ibid s 65(4).

7 In ibid s 66 'guidance' means guidance issued by the Lord Chancellor under s 65 and includes guidance which has been revised and re-issued: s 66(7).

8 In ibid Pt 4 'Lord Chief Justice', unless otherwise stated, means the Lord Chief Justice of England and Wales: s 122.

9 Ibid s 66(1).

10 In ibid s 66 '40-day period' in relation to the draft of any proposed guidance means (1) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later day, and (2) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House, no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 66(7).

11 Ibid s 66(2).

12 Ibid s 66(3). Section 66(3) does not prevent a new draft of the proposed guidance from being laid before each House of Parliament after consultation with the Lord Chief Justice: s 66(4).

13 Ibid s 66(5). As to orders under the Constitutional Reform Act 2005 generally see s 144.

14 Ibid s 66(6).

4. Lord Chief Justice and Heads of Division: selection

Specified provisions¹ apply to a recommendation for an appointment to one of the following offices (1) Lord Chief Justice; (2) Master of the Rolls; (3) President of the Queen's Bench Division; (4) President of the Family Division; (5) Chancellor of the High Court².

1 Ie the Constitutional Reform Act 2005 ss 68-75: see PARAS 515B.5-515B.10.

2 Ibid s 67(1). Any such recommendation must be made in accordance with ss 68-75 and s 96 (see PARA 515B.28): s 67(2).

5. Lord Chief Justice and Heads of Division: duty to fill vacancies

The Lord Chancellor must make a recommendation to fill any vacancy¹ in the office² of Lord Chief Justice³. The Lord Chancellor must make a recommendation to fill any vacancy in any other office⁴.

1 In the Constitutional Reform Act 2005 Pt 4 (ss 61-122) 'vacancy' in relation to an office to which s 68 applies, means a vacancy arising on a holder of the office vacating it at any time after the commencement of s 68 (ie after 2 October 2006: see SI 2006/1014): 2005 Act s 122.

2 In ibid Pt 4 'office' includes a position of any description: s 122.

3 Ibid s 68(1).

4 In any other office listed in ibid s 67(1) (see PARA 515B.4): s 68(2). Section 68(2) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled: s 68(3).

6. Lord Chief Justice and Heads of Division: request for selection

The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation to which these provisions¹ apply². Before making a request the Lord Chancellor must consult the Lord Chief Justice³.

1 In the Constitutional Reform Act 2005 s 69.

2 Ibid s 69(1). As to recommendations to which s 69 applies see s 67; and PARA 515B.4.

3 Ibid s 69(2). Section 69(2) does not apply where the office of Lord Chief Justice is vacant or where the Lord Chief Justice is incapacitated for the purposes of s 16 (functions during vacancy or incapacity: see PARA 515C): s 69(3).

Sections 70-75 (see PARAS 515B.7-515B.10) apply where the Lord Chancellor makes a request under s 69: s 69(4). Sections 70-75 are subject to s 95 (withdrawal and modification of requests: see PARA 515B.27): s 69(5).

7. Lord Chief Justice and Heads of Division: selection process and selection panel

On receiving a request the Commission must appoint a selection panel¹. The panel must (1) determine the selection process to be applied, (2) apply the selection process, and (3) make a selection accordingly². One person only must be selected for each recommendation to which a request relates³. If practicable the panel must consult, about the exercise of its functions under these provisions⁴, the current holder of the office for which a selection is to be made⁵. A selection panel is a committee of the Commission⁶.

The selection panel must consist of four members⁷. The first member is the most senior England and Wales Supreme Court judge⁸ who is not disqualified⁹, or his nominee¹⁰. Unless specified provision¹¹ applies¹², the second member is the Lord Chief Justice or his nominee¹³. Unless specified provision¹⁴ applies¹⁵, the third member is the chairman of the Commission or his nominee¹⁶. The fourth member is a lay member of the Commission designated by the third member¹⁷. Only the following may be a nominee¹⁸ or designated under specified provision¹⁹ (a) an England and Wales Supreme Court judge, (b) a Head of Division²⁰, or (c) a Lord Justice of Appeal²¹. The following also apply to nominees (i) a person may not be a nominee if he is disqualified; (ii) a person may not be appointed to the panel as the nominee of more than one person; (iii) a person appointed to the panel otherwise than as a nominee may not be a nominee²².

1 Constitutional Reform Act 2005 s 70(1).

2 Ibid s 70(2).

After complying with s 70(2) the selection panel must submit a report to the Lord Chancellor: s 72(1). The report must (1) state who has been selected; (2) contain any other information required by the Lord Chancellor: s 72(2). The report must be in a form approved by the Lord Chancellor: s 72(3). After submitting the report the panel must provide any further information the Lord Chancellor may require: s 72(4).

3 Ibid s 70(3). Section 70(3) applies to selection under s 70 and to selection under s 75 (see PARA 515B.10): s 70(4).

4 In ibid s 70.

5 Ibid s 70(5).

6 Ibid s 70(6).

7 Ibid s 71(1).

8 In ibid s 71 'England and Wales Supreme Court judge' means a judge of the Supreme Court who has held high judicial office in England and Wales before appointment to the Court: s 71(15). In Pt 4 (ss 61-122) 'high judicial office' has the meaning given by s 60 (see PARA 521A.1): s 122.

9 A person is disqualified for the purposes of ibid s 71 if (1) he is the current holder of the office for which a selection is to be made, or (2) he is willing to be considered for selection: s 71(14).

10 Ibid s 71(2). The first member is the chairman of the panel: s 71(12). On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie: s 71(13).

11 Ie ibid s 71(7).

12 Ibid s 71(7) applies if (1) the Lord Chief Justice is disqualified, or (2) there is no Lord Chief Justice: s 71(6). In those cases the most senior England and Wales Supreme Court judge who is not disqualified must designate a person (but not a person who is disqualified) as the second member: s 71(7).

13 Ibid s 71(3).

14 Ie ibid s 71(9).

15 Ibid s 71(9) applies if (1) there is no chairman of the Commission, or (2) the chairman of the Commission is unavailable and has not nominated a person under s 71(4): s 71(8). In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman: s 71(9). In Pt 4 'lay member' of the Commission has the meaning given by Sch 12 para 4: s 122. As to Sch 12 see PARA 515A.1.

16 Ibid s 71(4).

17 Ibid s 71(5).

18 Ie under ibid s 71(2) or (3).

19 Ie designated under ibid s 71(7).

20 In ibid Pt 4 'Head of Division' means any of these (1) the Master of the Rolls; (2) the President of the Queen's Bench Division; (3) the President of the Family Division; (4) the Chancellor of the High Court: s 122.

21 Ibid s 71(10). In Pt 4 'Lord Justice of Appeal' means a Lord Justice of Appeal in England and Wales: s 122.

22 Ibid s 71(11).

8. Lord Chief Justice and Heads of Division: the Lord Chancellor's options

The following provisions¹ refer to the following stages--

Stage 1	where a person has been selected under the Constitutional Reform Act 2005 s 70 ²
Stage 2	where a person has been selected following a rejection or reconsideration at stage 1
Stage 3	where a person has been selected following a rejection or reconsideration at stage 2 ³

At stage 1 the Lord Chancellor must do one of the following (1) accept the selection; (2) reject the selection; (3) require the selection panel to reconsider the selection⁴. At stage 2 the Lord Chancellor must do one of the following (a) accept the selection; (b) reject the selection, but only if it was made following a reconsideration at stage 1; (c) require the selection panel to

reconsider the selection, but only if it was made following a rejection at stage 1⁵. At stage 3 the Lord Chancellor must accept the selection⁶.

1 Ie the Constitutional Reform Act 2005 s 73.

2 See PARA 515B.7.

3 Constitutional Reform Act 2005 s 73(1).

4 Ibid s 73(2).

5 Ibid s 73(3).

6 Unless ibid s 73(5) applies and he accepts a selection under it: s 73(4). If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage: s 73(5).

9. Lord Chief Justice and Heads of Division: exercise of powers to reject or require reconsideration

The power of the Lord Chancellor¹ to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned². The power of the Lord Chancellor³ to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion (1) there is not enough evidence that the person is suitable for the office concerned, or (2) there is evidence that the person is not the best candidate on merit⁴. The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection⁵.

1 Ie under the Constitutional Reform Act 2005 s 73: see PARA 515B.8.

2 Ibid s 74(1).

3 Ie under ibid s 73.

4 Ibid s 74(2).

5 Ibid s 74(3).

10. Lord Chief Justice and Heads of Division: selection following rejection or requirement to reconsider

If¹ the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with these provisions². If the Lord Chancellor rejects a selection, the selection panel (1) may not select the person rejected, and (2) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered³. If the Lord Chancellor requires a selection to be reconsidered, the selection panel (a) may select the same person or a different person, but (b) where the requirement is following a rejection, may not select the person rejected⁴. The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider⁵.

1 Ie under the Constitutional Reform Act 2005 s 73: see PARA 515B.8.

2 Ie in accordance with ibid s 75: s 75(1).

3 Ibid s 75(2). See further NOTE 4.

4 Ibid s 75(3). Section 75(2) and (3) do not prevent a person being selected on a subsequent request under s 69 (see PARA 515B.6): s 75(5).

5 Ibid s 75(4).

10a. Senior President of Tribunals: selection process

On receiving a request for a person to be selected for recommendation for appointment to the office of Senior President of Tribunals¹ the Commission must appoint a selection panel². The panel must (1) determine the selection process to be applied, (2) apply the selection process, and (3) make a selection accordingly³. As part of the selection process the panel must consult (a) the Lord Chief Justice, if not a member of the panel, (b) the Lord President of the Court of Session, if not a member of the panel, and (c) the Lord Chief Justice of Northern Ireland, if not a member of the panel⁴. One person only must be selected for the recommendation to which a request relates⁵. A selection panel is a committee of the Commission⁶.

1 I.e. a request by the Lord Chancellor to the Commission under the Tribunals, Courts and Enforcement Act 2007 Sch 1 para 2(5).

The Constitutional Reform Act 2005 ss 75B-75G (see PARAS 515B.10b-515.10f) apply where the Lord Chancellor makes a request to the Commission under the 2007 Act Sch 1 para 2(5): 2005 Act s 75A(1) (added by 2007 Act Sch 1 para 4). The 2005 Act ss 75B-75G are subject to s 95 (withdrawal and modification of requests) (see PARA 515B.27): s 75A(2).

2 Ibid s 75B(1).

3 Ibid s 75B(2).

4 Ibid s 75B(3).

5 Ibid s 75B(4). Section 75B(4) applies to selection under s 75B and to selection under s 75G (see PARA 515B.10f): s 75B(5).

6 Ibid s 75B(6).

10b. Senior President of Tribunals: selection panel

The selection panel must consist of four members¹. The first member is the Lord Chief Justice, or his nominee². The second member is a person designated by the Lord Chief Justice³. Unless specified provision applies⁴ the third member is the chairman of the Commission or his nominee⁵. The fourth member is a lay member of the Commission designated by the third member⁶. A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal⁷. A person may not be appointed to the panel if he is willing to be considered for selection⁸. A person may not be appointed to the panel as the nominee of more than one person⁹. A person appointed to the panel otherwise than as a nominee may not be a nominee¹⁰. The first member is the chairman of the panel¹¹. On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie¹².

1 Constitutional Reform Act 2005 s 75C(1) (added by Tribunals, Courts and Enforcement Act 2007 Sch 1 para 4).

2 2005 Act s 75C(2).

3 Ibid s 75C(3). The person designated under s 75C(3) must be (1) a person who holds, or has held, the office of Senior President of Tribunals, (2) a person who holds, or has held, office as a Chamber President of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal, or (3) a person who holds, or has held, an office that, in the opinion of the Lord Chief Justice, is such that a holder of it would acquire knowledge or experience of tribunals broadly similar to that which would be acquired by (a) a person who holds the office of

Senior President of Tribunals, or (b) a person who holds office as a Chamber President of a chamber of the First-tier Tribunal, or (c) a person who holds office as a Chamber President of a chamber of the Upper Tribunal: s 75C(9). Before designating a person under s 75C(3), the Lord Chief Justice must consult (i) the Lord President of the Court of Session, and (ii) the Lord Chief Justice of Northern Ireland: s 75C(10).

4 Ibid s 75C(7).

5 Ibid s 75C(4). Section 75C(7) applies if (1) there is no chairman of the Commission, or (2) the chairman of the Commission is unavailable and has not nominated a person under s 75C(4): s 75C(6). In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman: s 75C(7).

6 Ibid s 75C(5).

7 Ibid s 75C(8).

8 Ibid s 75C(11).

9 Ibid s 75C(12).

10 Ibid s 75C(13).

11 Ibid s 75C(14).

12 Ibid s 75C(15).

10c. Senior President of Tribunals: report

After complying with provision relating to the selection process¹ the selection panel must submit a report to the Lord Chancellor². The report must (1) state who has been selected; (2) contain any other information required by the Lord Chancellor³. The report must be in a form approved by the Lord Chancellor⁴. After submitting the report the panel must provide any further information the Lord Chancellor may require⁵.

1 Ibid after complying with the Constitutional Reform Act 2005 s 75B(2): see PARA 515B.10a.

2 Ibid s 75D(1) (added by Tribunals, Courts and Enforcement Act 2007 Sch 1 para 4).

3 2005 Act s 75D(2).

4 Ibid s 75D(3).

5 Ibid s 75D(4).

10d. Senior President of Tribunals: the Lord Chancellor's options

The following provisions¹ refer to the following stages--

Stage 1	where a person has been selected under the Constitutional Reform Act 2005 s 75B ²
Stage 2	where a person has been selected following a rejection or reconsideration at stage 1
Stage 3	where a person has been selected following a rejection or reconsideration at stage 2 ³

At stage 1 the Lord Chancellor must do one of the following (1) accept the selection; (2) reject the selection; (3) require the selection panel to reconsider the selection⁴. At stage 2 the Lord Chancellor must do one of the following (a) accept the selection; (b) reject the selection, but only if it was made following a reconsideration at stage 1; (c) require the selection panel to

reconsider the selection, but only if it was made following a rejection at stage 1⁵. At stage 3 the Lord Chancellor must accept the selection⁶.

1 Ie the Constitutional Reform Act 2005 s 75E.

2 See PARA 515B.10a.

3 2005 Act s 75E(1) (added by Tribunals, Courts and Enforcement Act 2007 Sch 1 para 4).

4 2005 Act s 75E(2).

5 Ibid s 75E(3).

6 Ibid s 75E(4). He must do so unless s 75E(5) applies and he accepts a selection under it: s 75E(4). If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage: s 75E(5).

10e. Senior President of Tribunals: exercise of powers to reject or require reconsideration

The power of the Lord Chancellor¹ to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office of Senior President of Tribunals². The power of the Lord Chancellor³ to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion (1) there is not enough evidence that the person is suitable for the office of Senior President of Tribunals, or (2) there is evidence that the person is not the best candidate on merit⁴. The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection⁵.

1 Ie under the Constitutional Reform Act 2005 s 75E: see PARA 515B.10d.

2 Ibid s 75F(1) (added by Tribunals, Courts and Enforcement Act 2007 Sch 1 para 4).

3 Ie under the 2005 Act s 75E.

4 Ibid s 75F(2).

5 Ibid s 75F(3).

10f. Senior President of Tribunals: selection following rejection or requirement to reconsider

If¹ the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with these provisions². If the Lord Chancellor rejects a selection, the selection panel (1) may not select the person rejected, and (2) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered³. If the Lord Chancellor requires a selection to be reconsidered, the selection panel (a) may select the same person or a different person, but (b) where the requirement is following a rejection, may not select the person rejected⁴. The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider⁵.

1 Ie under the Constitutional Reform Act 2005 s 75F: see PARA 515B.10e.

2 Ie in accordance with ibid s 75G: s 75G(1) (added by Tribunals, Courts and Enforcement Act 2007 Sch 1 para 4).

3 2005 Act s 75G(2). See further NOTE 4.

4 Ibid s 75G(3). Sections 75G(2), (3) does not prevent a person being selected on a subsequent request under the Tribunals, Courts and Enforcement Act 2007 Sch 1 para 2(5): 2005 Act s 75G(5).

5 Ibid s 75G(4).

11. Lord Justices of Appeal: selection

Specified provisions¹ apply to a recommendation for appointment as a Lord Justice of Appeal².

1 Ie the Constitutional Reform Act 2005 ss 77-84: see PARAS 515B.12-515B.17.

2 Ibid s 76(1). Any such recommendation must be made in accordance with ss 77-84 and s 96 (see PARA 515B.28): s 76(2).

12. Lord Justices of Appeal: duty to fill vacancies

The Lord Chancellor must make a recommendation to fill any vacancy¹ in the office of Lord Justice of Appeal².

1 In the Constitutional Reform Act 2005 Pt 4 (ss 61-122) 'vacancy' in relation to an office to which s 77 applies, means a vacancy arising on a holder of the office vacating it at any time after the commencement of s 77 (ie after 2 October 2006: see SI 2006/1014): 2005 Act s 122.

2 Ibid s 77(1). Section 77(1) does not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled: s 77(2).

13. Lord Justices of Appeal: request for selection

The Lord Chancellor may make a request to the Commission for a person to be selected for a recommendation for appointment as a Lord Justice of Appeal¹. Before making a request the Lord Chancellor must consult the Lord Chief Justice². A request may relate to more than one recommendation³.

1 Constitutional Reform Act 2005 s 78(1).

2 Ibid s 78(2).

3 Ibid s 78(3).

Sections 79-84 (see PARAS 515B.14-515B.17) apply where the Lord Chancellor makes a request under s 78: s 78(4). Sections 79-84 are subject to s 95 (withdrawal and modification of requests) (see PARA 515B.27): s 78(5).

14. Lord Justices of Appeal: selection process and selection panel

On receiving a request the Commission must appoint a selection panel¹. The panel must (1) determine the selection process to be applied, (2) apply the selection process, and (3) make a selection accordingly². One person only must be selected for each recommendation to which a request relates³. A selection panel is a committee of the Commission⁴.

The selection panel must consist of four members⁵. The first member is the Lord Chief Justice, or his nominee⁶. The second member is a Head of Division or Lord Justice of Appeal designated by the Lord Chief Justice⁷. Unless specified provision⁸ applies⁹, the third member is the chairman of the Commission or his nominee¹⁰. The fourth member is a lay member of the Commission designated by the third member¹¹. A person may not be appointed to the panel if he is willing to

be considered for selection¹². A person may not be appointed to the panel as the nominee of more than one person¹³. A person appointed to the panel otherwise than as a nominee may not be a nominee¹⁴.

1 Constitutional Reform Act 2005 s 79(1).

2 Ibid s 79(2). After complying with s 79(2) the selection panel must submit a report to the Lord Chancellor: s 81(1). The report must (1) state who has been selected; (2) contain any other information required by the Lord Chancellor: s 81(2). The report must be in a form approved by the Lord Chancellor: s 81(3). After submitting the report the panel must provide any further information the Lord Chancellor may require: s 81(4).

3 Ibid s 79(3). Section 79(3) applies to selection under s 79 and to selection under s 84 (see PARA 515B.17): s 79(4).

4 Ibid s 79(5).

5 Ibid s 80(1).

6 Ibid s 80(2). A nominee of the Lord Chief Justice must be a Head of Division or a Lord Justice of Appeal: s 80(8). The first member is the chairman of the panel: s 80(12). On any vote by the panel the chairman of the panel has an additional, casting vote in the event of a tie: s 80(13).

7 Ibid s 80(3).

8 Ibid s 80(7).

9 Ibid s 80(7) applies if (1) there is no chairman of the Commission, or (2) the chairman of the Commission is unavailable and has not nominated a person under s 80(4): s 80(6). In those cases the third member is a lay member of the Commission selected by the lay members of the Commission other than the chairman: s 80(7).

10 Ibid s 80(4).

11 Ibid s 80(5).

12 Ibid s 80(9).

13 Ibid s 80(10).

14 Ibid s 80(11).

15. Lord Justices of Appeal: the Lord Chancellor's options

The following provisions¹ refer to the following stages--

Stage 1	where a person has been selected under the Constitutional Reform Act 2005 s 79 ²
Stage 2	where a person has been selected following a rejection or reconsideration at stage 1
Stage 3	where a person has been selected following a rejection or reconsideration at stage 2 ³

At stage 1 the Lord Chancellor must do one of the following (1) accept the selection; (2) reject the selection; (3) require the selection panel to reconsider the selection⁴. At stage 2 the Lord Chancellor must do one of the following (a) accept the selection; (b) reject the selection, but only if it was made following a reconsideration at stage 1; (c) require the selection panel to reconsider the selection, but only if it was made following a rejection at stage 1⁵. At stage 3 the Lord Chancellor must accept the selection⁶.

1 Ibid the Constitutional Reform Act 2005 s 82.

2 See PARA 515B.14.

3 Constitutional Reform Act 2005 s 82(1).

4 Ibid s 82(2).

5 Ibid s 82(3).

6 Ibid s 82(4). He must do so unless s 82(5) applies and he accepts a selection under it: s 82(4). If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage: s 82(5).

16. Lord Justices of Appeal: exercise of powers to reject or require reconsideration

The power of the Lord Chancellor¹ to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned². The power of the Lord Chancellor³ to require the selection panel to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion (1) there is not enough evidence that the person is suitable for the office concerned, or (2) there is evidence that the person is not the best candidate on merit⁴. The Lord Chancellor must give the selection panel reasons in writing for rejecting or requiring reconsideration of a selection⁵.

1 Ie under the Constitutional Reform Act 2005 s 82: see PARA 515B.15.

2 Ibid s 83(1).

3 Ie under ibid s 82.

4 Ibid s 83(2).

5 Ibid s 83(3).

17. Lord Justices of Appeal: selection following rejection or requirement to reconsider

If the Lord Chancellor rejects or requires¹ reconsideration of a selection at stage 1 or 2, the selection panel must select a person in accordance with these provisions². If the Lord Chancellor rejects a selection, the selection panel (1) may not select the person rejected, and (2) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered³. If the Lord Chancellor requires a selection to be reconsidered, the selection panel (a) may select the same person or a different person, but (b) where the requirement is following a rejection, may not select the person rejected⁴. The selection panel must inform the Lord Chancellor of the person selected following a rejection or a requirement to reconsider⁵.

1 Ie under the Constitutional Reform Act 2005 s 82: see PARA 515B.15.

2 Ie in accordance with ibid s 84: s 84(1).

3 Ibid s 84(2). See further NOTE 4.

4 Ibid s 84(3). Section 84(2), (3) does not prevent a person being selected on a subsequent request under s 78 (see PARA 515B.13): s 84(5).

5 Ibid s 84(4).

18. Puisne judges and other office holders: selection

Specified provisions¹ apply to (1) a recommendation for an appointment to the office of puisne judge of the High Court²; (2) a recommendation for an appointment to an office listed in Part 1 of Schedule 14 to the Constitutional Reform Act 2005 in exercise of Her Majesty's function³ under the enactment⁴ listed opposite that office; (3) an appointment to an office listed in Part 2 or 3 of Schedule 14 to the Constitutional Reform Act 2005 in exercise of the Lord Chancellor's function under the enactment listed opposite that office⁵.

1 Ie the Constitutional Reform Act 2005 ss 86-93: see PARAS 515B.19-515B.25.

2 In *ibid* Pt 4 (ss 61-122) 'High Court' means the High Court in England and Wales: s 122.

3 In the 2005 Act 'functions' includes powers and duties: s 142. Schedule 14 partly in force: SI 2006/1014; SI 2007/967.

4 For the meaning of 'enactment' see *ibid* s 140.

5 *Ibid* s 85(1). Any such recommendation or appointment must be made in accordance with ss 86-93 and s 96 (see PARA 515B.28): s 85(2). Section 85 is subject to (1) the Courts-Martial (Appeals) Act 1951 s 30(4), (2) the Senior Courts Act 1981 ss 91(1ZB) and 102(1C), (3) the County Courts Act 1984 s 8(1ZC), and (4) the 2005 Act ss 94A and 94B (see PARAS 515B.26a, 515B.26b): s 85(2A) (added by Tribunals, Courts and Enforcement Act 2007 s 53(3)).

The Lord Chancellor may by order make any of the following amendments to the 2005 Act Sch 14 (1) an amendment which adds a reference to an enactment under which appointments are made to an office; (2) an amendment which adds a reference to an office to which appointments are made under an enactment; (3) an amendment consequential on the abolition or change of name of an office; (4) an amendment consequential on the substitution of one or more enactments for an enactment under which appointments are made to an office: s 85(3). See Judicial Appointments and Discipline (Modification of Offices) Order 2006, SI 2006/678; Judicial Appointments and Discipline (Modification of Offices) (No 2) Order 2006, SI 2006/1551. As to orders under the Constitutional Reform Act 2005 generally see s 144.

The Lord Chancellor may by order amend s 94A or 94B if he thinks that the amendment is consequential on an amendment made to Sch 14 by an order under s 85(3): s 85(4) (added by 2007 Act s 53(4)).

2005 Act Sch 14 Pt 1 amended: Armed Forces Act 2006 Sch 17; SI 2008/2833. 2005 Act Sch 14 Pts 2, 3 amended: Charities Act 2006 Sch 8 para 208; Armed Forces Act 2006 Sch 16 para 244; Income Tax Act 2007 Sch 1 para 491; Local Government and Public Involvement in Health Act 2007 Sch 16 para 16; Tribunals, Courts and Enforcement Act 2007 ss 57(7), 59, Sch 11 para 15, Sch 23 Pt 2; SI 2006/678; SI 2006/1551; SI 2006/2805; SI 2008/2833; SI 2009/1307, SI 2009/1834.

19. Puisne judges and other office holders: duty to fill vacancies

The Lord Chancellor must make a recommendation to fill any vacancy¹ in the office of puisne judge of the High Court or in an office listed in Part 1 of Schedule 14 to the Constitutional Reform Act 2005². The Lord Chancellor must make an appointment to fill any vacancy in an office listed in Part 2 or 3 of Schedule 14 to the Constitutional Reform Act 2005³. The above provisions⁴ do not apply to a vacancy while the Lord Chief Justice agrees that it may remain unfilled⁵.

1 In the Constitutional Reform Act 2005 Pt 4 (ss 61-122) 'vacancy' in relation to an office to which s 86 applies, means a vacancy arising on a holder of the office vacating it at any time after the commencement of s 86 (ie after 3 April 2006: see SI 2006/1014): 2005 Act s 122.

2 *Ibid* s 86(1).

3 *Ibid* s 86(2).

4 Ie *ibid* s 86(1), (2).

5 *Ibid* s 86(3).

20. Puisne judges and other office holders: request for selection

The Lord Chancellor may request the Commission to select a person for a recommendation or appointment to which the following provisions¹ apply². Before making a request the Lord Chancellor must consult the Lord Chief Justice³. A request may relate to more than one recommendation or appointment⁴.

1 Ie the Constitutional Reform Act 2005 s 87.

2 Ibid s 87(1).

3 Ibid s 87(2).

4 Ibid s 87(3).

Sections 88-93 (see PARAS 515B.21-515B.25) apply where the Lord Chancellor makes a request under s 87: s 87(4). Sections 88-93 are subject to s 95 (withdrawal and modification of requests) (see PARA 515B.27): s 87(5).

21. Puisne judges and other office holders: selection process

On receiving a request the Commission must (1) determine the selection process to be applied, (2) apply the selection process, and (3) make a selection accordingly¹. As part of the selection process the Commission must consult (a) the Lord Chief Justice; and (b) a person (other than the Lord Chief Justice) who has held the office for which a selection is to be made or has other relevant experience². One person only may be selected for each recommendation or appointment to which a request relates³.

After complying with the above provisions⁴ the Commission must submit a report to the Lord Chancellor⁵. The report must (i) describe the selection process; (ii) state any selection made; (iii) state any decision⁶; (iv) state any recommendation made in consultation⁷ by a person consulted; (v) give reasons in any case where the Commission has not followed such a recommendation; (vi) contain any other information required by the Lord Chancellor⁸. The report must be in a form approved by the Lord Chancellor⁹. After submitting the report the Commission must provide any further information the Lord Chancellor may require¹⁰.

1 Constitutional Reform Act 2005 s 88(1). If or so far as the Commission decides that the selection process has not identified candidates of sufficient merit for it to comply with head (3) in the text, s 93 (see PARA 515B.25) applies and head (3) in the text does not apply: s 88(2).

2 Ibid s 88(3).

3 Ibid s 88(4). Section 88(4) applies to selection under s 88 and to selection under s 92 (see PARA 515B.24) or 93 (see PARA 515B.25): s 88(5).

4 Ie ibid s 88.

5 Ibid s 89(1).

6 Ie under ibid s 88(2).

7 Ie under ibid s 88(3).

8 Ibid s 89(2).

9 Ibid s 89(3).

10 Ibid s 89(4).

22. Puisne judges and other office holders: the Lord Chancellor's options

The following provisions¹ refer to the following stages--

Stage 1	where a person has been selected under the Constitutional Reform Act 2005 s 88 ²
Stage 2	where a person has been selected following a rejection or reconsideration at stage 1
Stage 3	where a person has been selected following a rejection or reconsideration at stage 2 ³

At stage 1 the Lord Chancellor must do one of the following (1) accept the selection; (2) reject the selection; (3) require the Commission to reconsider the selection⁴. At stage 2 the Lord Chancellor must do one of the following (a) accept the selection; (b) reject the selection, but only if it was made following a reconsideration at stage 1; (c) require the Commission to reconsider the selection, but only if it was made following a rejection at stage 1⁵. At stage 3 the Lord Chancellor must accept the selection⁶. Before exercising his powers under these provisions⁷ at any stage in relation to a selection for an appointment or recommendation, the Lord Chancellor must (i) consult any person whom he is required by any enactment⁸ to consult before making the appointment or recommendation, and (ii) consult the Scottish Ministers if it appears to him to be an appointment, or a recommendation for the appointment, of a person to exercise functions wholly or mainly in Scotland⁹.

1 Ie the Constitutional Reform Act 2005 s 90.

2 See PARA 515B.21.

3 2005 Act s 90(1).

4 Ibid s 90(2).

5 Ibid s 90(3).

6 Ibid s 90(4). He must do so unless s 90(5) applies and he accepts a selection under it: s 90(4). If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may, at stage 3, accept the selection made at that earlier stage: s 90(5).

7 Ie ibid s 90.

8 For the meaning of 'enactment' see s 140.

9 2005 Act s 90(6).

23. Puisne judges and other office holders: exercise of powers to reject or require reconsideration

The power of the Lord Chancellor¹ to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned or particular functions of that office². The power of the Lord Chancellor³ to require the Commission to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion (1) there is not enough evidence that the person is suitable for the office concerned or particular functions of that office, or (2) there is evidence that the person is not the best candidate on merit⁴. The Lord Chancellor must give the Commission reasons in writing for rejecting or requiring reconsideration of a selection⁵.

1 Ie under the Constitutional Reform Act 2005 s 90: see PARA 515B.22.

2 Ibid s 91(1).

3 Ie under *ibid* s 90.

4 *Ibid* s 91(2).

5 *Ibid* s 91(3).

24. Puisne judges and other office holders: rejection or requirement to reconsider

If¹ the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the Commission must select a person in accordance with these provisions². If the Lord Chancellor rejects a selection, the Commission (1) may not select the person rejected, and (2) where the rejection is following a requirement to reconsider, may not select the person (if different) whose selection it reconsidered³. If the Lord Chancellor requires a selection to be reconsidered, the Commission (a) may select the same person or a different person, but (b) where the requirement is following a rejection, may not select the person rejected⁴. The Commission must inform the Lord Chancellor of any person selected following a rejection or a requirement to reconsider⁵.

1 Ie under the Constitutional Reform Act 2005 s 90: see PARA 515B.22.

2 Ie in accordance with *ibid* s 92: s 92(1).

3 *Ibid* s 92(2). See further NOTE 4.

4 *Ibid* s 92(3). If the Commission decides that the selection process has not identified a candidate of sufficient merit for it to make a selection under s 92 (1) s 93 (see PARA 515B.25) applies; (2) s 92(1) does not apply, but s 92(2), (3) applies to any selection under s 93: s 92(4). Section 92(2), (3) does not prevent a person being selected on a subsequent request under s 87 (see PARA 515B.20): s 92(6).

5 *Ibid* s 92(5).

25. Puisne judges and other office holders: reconsideration of decision not to select

The Lord Chancellor may require the Commission to reconsider a decision that the selection process has not identified candidates of sufficient merit for it to make a selection¹. The Commission must inform the Lord Chancellor of any person selected on reconsideration under these provisions².

1 Constitutional Reform Act 2005 s 93(1).

2 Ie under *ibid* s 93: s 93(2).

Sections 90-92 (see PARAS 515B.22-515B.24) apply to such a person as if the Commission had selected him instead of making the decision reconsidered: s 93(3).

26. Puisne judges and other office holders: duty to identify persons for future requests

If the Lord Chancellor gives the Commission notice of a request he expects to make¹ the Commission must (1) seek to identify persons it considers would be suitable for selection on the request, and (2) submit a report to the Lord Chancellor containing any information it considers appropriate about (a) the extent to which it has identified suitable persons, and (b) other matters likely to assist the Lord Chancellor in exercising his functions relating to appointments and recommendations². For the purposes of head (1) and (b) above, the Commission must in particular have regard to (i) the number of recommendations and appointments the Lord Chancellor expects to request selections for; (ii) the powers of the Lord

Chancellor to reject or require reconsideration of a selection³. As part of the process of identifying persons under head (1) above, the Commission must consult (A) the Lord Chief Justice, and (B) a person or persons, other than the Lord Chief Justice, with experience in the office or offices to which requests specified in the notice relate, or with other relevant experience⁴. A report under head (2) above must (aa) state any recommendation made in consultation⁵ by a person consulted; (bb) give reasons in any case where the Commission has not followed such a recommendation⁶. Where the Lord Chancellor makes a request for the purposes of which the Commission has identified persons under head (1) above, the Commission must, in determining the selection process to be applied, consider whether selection should be from among those persons⁷.

1 Ie under the Constitutional Reform Act 2005 s 87: see PARA 515B.20.

2 Ibid s 94(1).

3 Ibid s 94(2).

4 Ibid s 94(3).

5 Ie under ibid s 94(3).

6 Ibid s 94(4).

7 Ibid s 94(5).

26a. Puisne judges and other office holders: appointments not subject to s 85: courts

These provisions¹ apply to the appointment of a person, on a fee-paid² basis, to an office in the table below (the 'proposed appointment') if the person (1) holds the corresponding qualifying office (or one of them) on a salaried³ basis, or (2) ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis⁴.

Proposed appointment (fee paid)

An office listed in the Constitutional Reform Act 2005 Sch 14 Pt 2.
Deputy District Judge (Magistrates' Courts).

Assistant Judge Advocate General,
or
a person appointed temporarily to assist the
Judge Advocate General.

Qualifying office (salaried)

The same office.

District Judge (Magistrates' Courts),
Senior District Judge (Chief Magistrate), or
Deputy Senior District Judge (Chief
Magistrate)
Judge Advocate of Her Majesty's Fleet,
Judge Advocate General,
Vice Judge Advocate General, or
Assistant Judge Advocate General.

1 Ie the Constitutional Reform Act 2005 s 94A.

2 In ibid s 94A 'fee-paid' has the meaning given by the Judicial Pensions and Retirement Act 1993 Sch 7 para 1(2): 2005 Act s 94A(4) (s 94A added by Tribunals, Courts and Enforcement Act 2007 s 53(2)).

3 In the 2005 Act s 94A 'salaried' has the meaning given by the 1993 Act Sch 7 para 1(2): 2005 Act s 94A(4).

4 Ibid s 94A(2).

Where s 94A applies to an appointment (1) s 85 (see PARA 515B.18) does not apply, but (2) the Lord Chancellor may not make the appointment without the concurrence of the Lord Chief Justice: s 94A(1)). The Lord Chief Justice may nominate a judicial office holder (as defined in s 109(4)) to exercise his function under head (2) above: s 94A(3).

26b. Puisne judges and other office holders: appointments not subject to s 85: tribunals

These provisions¹ apply to, or to a recommendation to Her Majesty for, the appointment of a person, on a fee-paid² basis, to an office in the table below (the 'proposed appointment') if the person (1) holds the corresponding qualifying office (or one of them) on a salaried³ basis, or (2) ceased to hold the corresponding qualifying office (or one of them) within two years ending with the date when the proposed appointment takes effect and, immediately before ceasing to hold that office, held it on a salaried basis⁴.

Proposed appointment (fee-paid)

An office listed in the Constitutional Reform Act 2005 Sch 14 Pt 3 (other than the office of Chamber President or Deputy Chamber President of a chamber of the Upper Tribunal or the First-tier Tribunal).
Deputy judge of the Upper Tribunal

Judge of the First-tier Tribunal by appointment under the Tribunals, Courts and Enforcement Act 2007 Sch 2 para 1(1).
Other member of the First-tier Tribunal by appointment under the Tribunals, Courts and Enforcement Act 2007 Sch 2 para 2(1).
Judge of the Upper Tribunal by appointment under the Tribunals, Courts and Enforcement Act 2007 Sch 3 para 1(1).
Other member of the Upper Tribunal by appointment under the Tribunals, Courts and Enforcement Act 2007 Sch 3 para 2(1).
Deputy judge of the Upper Tribunal by appointment under the Tribunals, Courts and Enforcement Act 2007 Sch 3 para 7(1).

Qualifying office (salaried)

The same office, or
a more senior office, listed in Sch 14 Pt 3, in the same tribunal or body (but excluding the Upper Tribunal and the First-tier Tribunal).
Ordinary judge of the Court of Appeal in England and Wales,
Lord Justice of Appeal in Northern Ireland,
Judge of the Court of Session,
Puisne judge of the High Court in England and Wales or Northern Ireland,
Circuit judge,
Sheriff in Scotland,
County court judge in Northern Ireland,
District judge in England and Wales or Northern Ireland,
District Judge (Magistrates' Courts), or
Judge of the Upper Tribunal by virtue of any of the Tribunals, Courts and Enforcement Act 2007 s 5(1)(a)-(f) or (i).
Transferred-in judge of the First-tier Tribunal (see the Tribunals, Courts and Enforcement Act 2007 s 31(2)).
Transferred-in other member of the First-tier Tribunal (see the Tribunals, Courts and Enforcement Act 2007 s 31(2)).
Transferred-in judge of the Upper Tribunal (see the Tribunals, Courts and Enforcement Act 2007 s 31(2)).
Transferred-in other member of the Upper Tribunal (see the Tribunals, Courts and Enforcement Act 2007 s 31(2)).
Deputy judge of the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 s 31(2).

1 Ie the Constitutional Reform Act 2005 s 94B.

2 In ibid s 94B 'fee-paid' has the meaning given by the Judicial Pensions and Retirement Act 1993 Sch 7 para 1(2); 2005 Act s 94B(5) (added by Tribunals, Courts and Enforcement Act 2007 s 53(2)).

3 In the 2005 Act s 94B 'salaried' has the meaning given by the 1993 Act Sch 7 para 1(2); 2005 Act s 94B(5).

4 Ibid s 94B(3) (amended by SI 2008/2833). Head (2) in the text is subject to the 2005 Act s 94B(4): s 94B(3). In head (2) in the text the words 'within two years ending with the date when the proposed appointment takes effect' do not apply if (1) the proposed appointment is to the office of deputy judge of the Upper Tribunal, and (2) the corresponding qualifying office is (a) ordinary judge of the Court of Appeal in England and Wales, (b) Lord Justice of Appeal in Northern Ireland, (c) judge of the Court of Session, or (d) puisne judge of the High Court in England and Wales or Northern Ireland: s 94B(4).

Where s 94B applies to a recommendation or appointment (i) s 85 (see PARA 515B.18) does not apply, but (ii) the Lord Chancellor may not make the recommendation or appointment without the concurrence of the Senior President of Tribunals: s 94B(1) (as so added). In the case of the appointment of a person as a deputy judge of the Upper Tribunal, if the person holds or has held an office listed in the Tribunals, Courts and Enforcement Act 2007 s 6(1), the Lord Chancellor must also consult the Lord Chief Justice before making the appointment: 2005 Act s 94B(2).

27. **Withdrawal and modification of requests**

The following provisions¹ apply to a request². The Lord Chancellor may withdraw or modify a request only as follows (1) so far as a request relates to any recommendation or appointment to fill a vacancy, he may withdraw or modify it with the agreement of the Lord Chief Justice; (2) so far as a request relates to any recommendation or appointment otherwise than to fill a vacancy, he may withdraw or modify it after consulting the Lord Chief Justice; (3) he may withdraw a request as respects all recommendations or appointments to which it relates if, after consulting the Lord Chief Justice, he considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily³. If a request is withdrawn in part or modified, the Commission or selection panel may, if it thinks it appropriate because of the withdrawal or modification, change any selection already made pursuant to the request, except a selection already accepted⁴. The Lord Chancellor may not withdraw a request under head (3) above if he has exercised any of his powers⁵ in relation to a selection made pursuant to the request⁶. Any withdrawal or modification of a request must be by notice in writing to the Commission⁷. The notice must state whether the withdrawal or modification is under head (1), (2) or (3) above⁸. In the case of a withdrawal under head (3) above, the notice must state why the Lord Chancellor considers the selection process determined by the Commission or selection panel is not satisfactory, or has not been applied satisfactorily⁹. If or to the extent that a request is withdrawn (a) certain provisions¹⁰ of Part 4¹¹ of the Constitutional Reform Act 2005 cease to apply in relation to it, and (b) any selection made on it is to be disregarded¹². Withdrawal of a request to any extent does not affect the power of the Lord Chancellor to make another request in the same or different terms¹³.

1 Ie the Constitutional Reform Act 2005 s 95.

2 Ibid s 95(1) (amended by Tribunals, Courts and Enforcement Act 2007 Sch 1 para 5(2)), referring to a request under the 2005 Act s 69 (see PARA 515B.6), 78 (see PARA 515B.13) or 87 (see PARA 515B.20) or the Tribunals, Courts and Enforcement Act 2007 Sch 1 para 2(5) (see PARA 530E).

3 2005 Act s 95(2).

4 Ibid s 95(3).

5 Ie under ibid s 73(2) (see PARA 515B.8), 75E(2) (see PARA 515B.10d), 82(2) (see PARA 515B.15) or 90(2) (see PARA 515B.22).

6 Ibid s 95(4) (amended by 2007 Act Sch 1 para 5(3)).

7 2005 Act s 95(5).

- 8 Ibid s 95(6).
- 9 Ibid s 95(7).
- 10 Ie ibid ss 61-94: see PARAS 515A-515B.26.
- 11 Ie ibid Pt 4 (ss 61-122).
- 12 Ibid s 95(8).
- 13 Ibid s 95(9).

28. Effect of acceptance of selection

The following provisions¹ apply where the Lord Chancellor accepts a selection under Chapter 2 of Part 4 of the Constitutional Reform Act 2005². Subject to the following provisions³, the Lord Chancellor (1) must make the appointment, or recommendation, for which the selection has been made, and (2) must appoint, or recommend, the person selected⁴. Before making the appointment or recommendation the Lord Chancellor may direct the Commission to make arrangements in accordance with the direction (a) for any assessment of the health of the person selected that the Lord Chancellor considers appropriate, and (b) for a report of the assessment to be made to the Lord Chancellor⁵.

The following provision⁶ applies in any of the following circumstances, (i) the Lord Chancellor notifies the Commission that he is not satisfied on the basis of a report under head (b) above, having consulted the Lord Chief Justice, that the health of the person selected is satisfactory for the purposes of the appointment or recommendation; (ii) the person selected declines to be appointed or recommended, or does not agree within a time specified to him for that purpose; (iii) the person selected is otherwise not available within a reasonable time to be appointed or recommended⁷. Where this provision⁸ applies (A) the selection accepted and any previous selection for the same appointment or recommendation are to be disregarded; (B) the request pursuant to which the selection was made continues to have effect; (c) any subsequent selection pursuant to that request may be made in accordance with the same or a different selection process⁹.

- 1 Ie the Constitutional Reform Act 2005 s 96.
- 2 Ie ibid Pt 4 Ch 2 (ss 63-107): s 96(1).
- 3 Ie the following provisions of ibid s 96.
- 4 Ibid s 96(2).
- 5 Ibid s 96(3).
- 6 Ie ibid s 96(5).
- 7 Ibid s 96(4).
- 8 Ie ibid s 96(5).
- 9 Ibid s 96(5).

29. Assistance in connection with other appointments

The Commission must provide any assistance requested by the Lord Chancellor under the following provisions¹. The Lord Chancellor may request assistance for the making by him or by another minister of the Crown² of an appointment³ or recommendation for appointment⁴. The

Lord Chancellor may only request assistance under these provisions if it appears to him appropriate because of the Commission's other functions under Part 4 of the Constitutional Reform Act 2005 and the nature of the appointment concerned⁵. Without limiting the assistance that may be requested, it may include (1) determining a selection process; (2) applying a selection process; (3) selecting a person; (4) selecting a short list; (5) advice on any of those matters⁶. Before making a request the Lord Chancellor must consult (a) the Lord Chief Justice, and (b) the Commission⁷.

1 Constitutional Reform Act 2005 s 9(1).

2 In the 2005 Act 'minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975: 2005 Act s 142.

3 In *ibid* s 98 'appointment' includes the conferring of any public function: s 98(6). In the 2005 Act 'functions' includes powers and duties: s 142.

4 *Ibid* s 98(2), referring to appointment or recommendation for appointment other than one to which s 26 (see PARA 521A.2) or a provision of Pt 4 (ss 61-122) applies.

5 *Ibid* s 98(3).

6 *Ibid* s 98(4). In Pt 4 references to selection under Pt 4 include references to selection by the Commission pursuant to a request under s 98 (and references to a person selected under Pt 4 are to be read accordingly): s 98(7).

7 *Ibid* s 98(5).

30. Complaints to the Commission or the Lord Chancellor

The Commission must make arrangements for investigating any Commission complaint¹ made to it². The Lord Chancellor must make arrangements for investigating any departmental complaint³ made to him⁴. Arrangements under these provisions⁵ need not apply to a complaint made more than 28 days after the matter complained of⁶.

1 For the purposes of the Constitutional Reform Act 2005 Pt 4 (ss 61-122) a Commission complaint is a complaint by a qualifying complainant of maladministration by the Commission or a committee of the Commission: s 99(1), (2). A qualifying complainant is a complainant who claims to have been adversely affected, as an applicant for selection or as a person selected under Pt 4, by the maladministration complained of: s 99(1), (4). As to 'selection under Pt 4' see PARA 515B.29.

2 *Ibid* s 100(1).

3 For the purposes of *ibid* Pt 4 a departmental complaint is a complaint by a qualifying complainant of maladministration by the Lord Chancellor or his department in connection with any of the following (1) selection under Pt 4; (2) recommendation for or appointment to an office listed in Sch 14 (see PARA 515B.18): s 99(1), (3).

4 *Ibid* s 100(2).

5 *Ie* *ibid* s 100.

6 *Ibid* s 100(3).

31. Complaints to the Ombudsman

The following provisions¹ apply to a complaint which the complainant (1) has made to the Commission or the Lord Chancellor in accordance with arrangements², and (2) makes to the Ombudsman³ not more than 28 days after being notified of the Commission's or Lord Chancellor's decision on the complaint⁴. If the Ombudsman considers that investigation of the complaint is not necessary, he must inform the complainant⁵. Otherwise he must investigate

the complaint⁶. The Ombudsman may investigate a complaint which the complainant (a) has made to the Commission or the Lord Chancellor in accordance with arrangements⁷, and (b) makes to the Ombudsman at any time⁸. The Ombudsman may investigate a transferred complaint⁹ made to him, and no such complaint may be made under the Judicial Appointments Order¹⁰ after the commencement of these provisions¹¹. Any complaint to the Ombudsman under the above provisions must be in a form approved by him¹².

1 Ie the Constitutional Reform Act 2005 s 101(2), (3).

2 Ie under ibid s 100: see PARA 515B.30.

3 In ibid Pt 4 (ss 61-122) the 'Ombudsman' means the Judicial Appointments and Conduct Ombudsman (see PARA 515A.2): s 122.

4 Ibid s 101(1).

5 Ibid s 101(2).

6 Ibid s 101(3).

7 Ie under ibid s 100: see PARA 515B.30.

8 Ibid s 101(4).

9 A transferred complaint is a complaint that lay to those Commissioners (whether or not it was made to them) in respect of the application of appointment procedures before the commencement of s 101 (ie 3 April 2006 (see SI 2006/1014)), but not a complaint that those Commissioners had declined to investigate or on which they had concluded their investigation: 2005 Act s 101(7).

10 The Judicial Appointments Order is the Judicial Appointments Order in Council 2001, which sets out the functions of Her Majesty's Commissioners for Judicial Appointments: 2005 Act s 101(6).

11 Ie after 3 April 2006 (see SI 2006/1014): 2005 Act s 101(5).

12 Ibid s 101(8).

32. Report and recommendations

The Ombudsman must prepare a report on any complaint he has investigated¹. The report must state (1) what findings the Ombudsman has made; (2) whether he considers the complaint should be upheld in whole or part; (3) if he does, what if any action he recommends should be taken by the Commission or the Lord Chancellor as a result of the complaint². The recommendations that may be made under head (3) above include recommendations for the payment of compensation³. Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the complainant as a result of maladministration and not as a result of any failure to be appointed to an office to which the complaint related⁴.

The following provisions⁵ apply to a report⁶. The Ombudsman must submit a draft of the report (a) to the Lord Chancellor, and (b) if the complaint was a Commission complaint, to the Commission⁷. In finalising the report the Ombudsman (i) must have regard to any proposal by the Lord Chancellor or the Commission for changes in the draft report; (ii) must include in the report a statement of any such proposal not given effect to⁸. The report must be signed by the Ombudsman⁹. If the complaint was a Commission complaint the Ombudsman must send the report in duplicate to the Lord Chancellor and the Commission¹⁰. Otherwise the Ombudsman must send the report to the Lord Chancellor¹¹. The Ombudsman must send a copy of the report to the complainant, but that copy must not include information (A) which relates to an identified or identifiable individual other than the complainant, and (B) whose disclosure by the Ombudsman to the complainant would (apart from this provision¹²) be contrary to provision relating to confidentiality¹³.

- 1 Constitutional Reform Act 2005 s 102(1), referring to an investigation under s 101 (see PARA 515B.31).
- 2 Ibid s 102(2).
- 3 Ibid s 102(3).
- 4 Ibid s 102(4).
- 5 Ie ibid s 103.
- 6 Ibid s 103(1), referring to a report under s 102.
- 7 Ibid s 103(2).
- 8 Ibid s 103(3).
- 9 Ibid s 103(4).
- 10 Ibid s 103(5).
- 11 Ibid s 103(6).
- 12 Ie apart from ibid s 103(7).
- 13 Ibid s 103(7). As to provision relating to confidentiality see s 139; and PARA 521A.8.

33. References by the Lord Chancellor

If the Lord Chancellor refers to the Ombudsman any matter relating to the procedures of the Commission or a committee of the Commission, the Ombudsman must investigate it¹. The matter may relate to such procedures generally or in a particular case². The Ombudsman must report to the Lord Chancellor on any investigation under these provisions³. The report must state (1) what findings the Ombudsman has made; (2) what if any action he recommends should be taken by any person in relation to the matter⁴. The report must be signed by the Ombudsman⁵.

- 1 Constitutional Reform Act 2005 s 104(1).
- 2 Ibid s 104(2).
- 3 Ibid s 104(3).
- 4 Ibid s 104(4).
- 5 Ibid s 104(5).

34. Information

The Commission and the Lord Chancellor must provide the Ombudsman with such information as he may reasonably require relating to the subject matter of any investigation by him¹.

- 1 Constitutional Reform Act 2005 s 105, referring to an investigation under s 101 (see PARA 515B.31) or 104 (see PARA 515B.33).

35. Disclosure of information to the Commission

Information which is held by or on behalf of a permitted person¹ (whether obtained before or after these provisions² come into force³) may be disclosed to the Commission or a committee of

the Commission for the purposes of selection under Part 4 of the Constitutional Reform Act 2005⁴. A disclosure under these provisions is not to be taken to breach any restriction on the disclosure of information (however imposed)⁵. But nothing in these provisions authorises the making of a disclosure (1) which contravenes the Data Protection Act 1998, or (2) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000⁶. These provisions do not affect a power to disclose which exists apart from these provisions⁷. The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which he considers are of a public nature (including a body or person discharging regulatory functions in relation to any description of activities)⁸. Information must not be disclosed under these provisions on behalf of the Commissioners of Inland Revenue or on behalf of the Commissioners of Customs and Excise unless the Commissioners concerned authorise the disclosure⁹.

1 The following are permitted persons: (1) a chief officer of police of a police force in England and Wales; (2) a chief constable of a police force in Scotland; (3) the Chief Constable of the Police Service of Northern Ireland; (4) the Director General of the National Criminal Intelligence Service; (5) the Director General of the National Crime Squad; (6) the Commissioners of Inland Revenue; (7) the Commissioners of Customs and Excise: Constitutional Reform Act 2005 s 107(5).

2 *Ibid* s 107.

3 *Ibid* s 107 came into force on 3 April 2006: see SI 2006/1014.

4 2005 Act s 107(1). As to Pt 4 see ss 61-122.

5 *Ibid* s 107(2).

6 *Ibid* s 107(3).

7 *Ibid* s 107(4).

8 *Ibid* s 107(6). See Permitted Persons (Designation) Order 2006, SI 2006/679. As to orders under the Constitutional Reform Act 2005 generally see s 144.

9 *Ibid* s 107(7). The power to authorise a disclosure under s 107(7) may be delegated (either generally or for a specific purpose) (1) in the case of the Commissioners of Inland Revenue, to an officer of the Board of Inland Revenue, (2) in the case of the Commissioners of Customs and Excise, to a customs officer: s 107(8). For the purposes of s 107 a customs officer is a person commissioned by the Commissioners of Customs and Excise under the Customs and Excise Management Act 1979 s 6(3): 2005 Act s 107(9).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial

post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/515C. Functions of the Lord Chief Justice during vacancy or incapacity

515C. Functions of the Lord Chief Justice during vacancy or incapacity

The following provisions¹ apply during any period when (1) the office of Lord Chief Justice² is vacant, or (2) the Lord Chief Justice is incapacitated³. During such a period (a) any function of the Lord Chief Justice may be exercised by the senior Head of Division⁴; (b) anything which falls to be done in relation to the Lord Chief Justice may be done in relation to the senior Head of Division⁵.

¹ ie the Constitutional Reform Act 2005 s 16.

² In *ibid* s 16 'Lord Chief Justice' means the Lord Chief Justice of England and Wales: s 16(5)(a).

³ *Ibid* s 16(1). In s 16 'incapacitated', in relation to the Lord Chief Justice, means unable to exercise the functions of that office: s 16(5)(b). In the Constitutional Reform Act 2005 'functions' includes powers and duties: s 142. For the purposes of s 16 (1) the Lord Chief Justice is to be regarded as incapacitated only if at least three of the Heads of Division declare in writing that they are satisfied that he is incapacitated; (2) in such a case, the Lord Chief Justice is to be regarded as incapacitated until at least three of the Heads of Division declare in writing that they are satisfied that he is no longer incapacitated: s 16(4). In s 16 'Head of Division' means each of the office holders referred to in s 16(3): s 16(5)(c).

⁴ The senior Head of Division is (1) the Master of the Rolls, or (2) the President of the Queen's Bench Division, if the office in head (1) is vacant, or (3) the President of the Family Division, if the offices in heads (1)

and (2) are vacant, or (4) the Chancellor of the High Court, if the offices in heads (1), (2) and (3) are vacant: *ibid* s 16(3).

5 *Ibid* s 16(2).

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501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/516. Tenure of office of judges of the Supreme Court.

516. Tenure of office of judges of the Supreme Court.

The following provisions apply to the office of any judge of the Supreme Court¹ except the Lord Chancellor².

A person appointed to such an office must vacate it on the day on which he attains the age of 70 years unless he has ceased³ to hold it before then⁴. He holds that office during good behaviour, subject to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament⁵.

A person holding office as Lord Chief Justice⁶, Master of the Rolls⁷, President of the Family Division⁸ or Vice-Chancellor⁹ must vacate that office on becoming Lord Chancellor or a Lord of Appeal in Ordinary¹⁰. A Lord Justice of Appeal¹¹ must vacate that office on becoming an ex-officio judge of the Court of Appeal¹² and a puisne judge of the High Court¹³ must vacate that office on becoming a judge of the Court of Appeal¹⁴.

A person who holds an office to which these provisions apply may at any time resign it by giving the Lord Chancellor notice in writing to that effect¹⁵.

The Lord Chancellor, if satisfied by means of a medical certificate that a person holding an office to which these provisions apply is disabled by permanent infirmity from the performance of the duties of his office and is for the time being incapacitated from resigning his office, may by instrument under his hand declare that person's office to have been vacated; and the instrument has the like effect for all purposes as if that person had on the date of the instrument resigned his office¹⁶. Such a declaration made with respect to a person is, however, of no effect unless it is made with the concurrence of the specified person or persons¹⁷.

A Lord Justice of Appeal or High Court judge may hold office in a relevant international court without being required to relinquish his United Kingdom judicial office¹⁸.

The tenure of office of the vice-president of the Queen's Bench Division has already been discussed¹⁹.

1 As to the Supreme Court see PARA 601 post; and as to the appointment of Supreme Court judges see PARA 515 ante.

2 Supreme Court Act 1981 s 11(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 He ceased by virtue of *ibid* s 11 (as amended): see the text and notes 4-17 *infra*.

4 *Ibid* s 11(2) (amended by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 4).

5 Supreme Court Act 1981 s 11(3).

6 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

7 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

8 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

9 As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

10 Supreme Court Act 1981 ss 2(2)(d)-(g), 11(4). As to Lords of Appeal in Ordinary see PARA 369 ante.

- 11 As to Lords Justices of Appeal see PARA 637 post; and as to their appointment see PARA 515 ante.
- 12 As to the ex-officio judges of the Court of Appeal see PARA 637 post.
- 13 As to the judges of the High Court see PARA 602 post; and as to their appointment see PARA 515 ante.
- 14 Supreme Court Act 1981 s 11(6).
- 15 Ibid s 11(7).
- 16 Ibid s 11(8).
- 17 Ibid s 11(9). The specified persons whose concurrence is required are: (1) in the case of any of the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor, two others of them; (2) in the case of a Lord Justice of Appeal, the Master of the Rolls; and (3) in the case of a puisne judge of any Division of the High Court, the senior judge of that Division: s 11(9)(a)-(c). As to the Divisions of the High Court and the senior judges of the Divisions see PARA 603 post.
- 18 See the Access to Justice Act 1999 s 68(2), (2)(a); and PARA 521 post.
- 19 See PARA 515 the text and note 18 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and

prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

516 Tenure of office of judges of the [Senior Courts]

TEXT AND NOTES--For matters relating to discipline see Constitutional Reform Act 2005 Pt 4 Ch 3 (ss 108-121); and PARA 516A.

TEXT AND NOTES 1-17--1981 Act s 11 amended: 2005 Act Sch 4 para 123, Sch 18 Pt 2.

TEXT AND NOTE 10--1981 Act s 11(4) amended: 2005 Act Sch 17 para 22(4) (not yet in force).

TEXT AND NOTES 15, 16--The Lord Chancellor's functions under the 1981 Act s 11(7), (8) are protected functions for the purposes of the 2005 Act s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

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516A. Discipline.

1. Disciplinary powers

Any power of the Lord Chancellor to remove a person from an office¹ is exercisable only after the Lord Chancellor has complied with prescribed² procedures (as well as any other requirements to which the power is subject)³. The Lord Chief Justice may exercise any of the following powers but only with the agreement of the Lord Chancellor and only after complying with prescribed procedures⁴. The Lord Chief Justice may give a judicial office holder⁵ formal advice, or a formal warning or reprimand, for disciplinary purposes (but these provisions⁶ do not restrict what he may do informally or for other purposes or where any advice or warning is not addressed to a particular office holder)⁷. He may suspend a person from a judicial office for any period during which any of the following applies (1) the person is subject to criminal proceedings⁸; (2) the person is serving a sentence⁹ imposed in criminal proceedings; (3) the person has been convicted of an offence and is subject to prescribed procedures in relation to the conduct constituting the offence¹⁰. He may suspend a person from a judicial office for any period if (a) the person has been convicted of a criminal offence, (b) it has been determined under prescribed procedures that the person should not be removed from office, and (c) it appears to the Lord Chief Justice with the agreement of the Lord Chancellor that the suspension is necessary for maintaining confidence in the judiciary¹¹. He may suspend a person from office as a senior judge for any period during which the person is subject to proceedings for an Address¹². He may suspend the holder of an office¹³ for any period during which the person (i) is under investigation for an offence¹⁴, or (ii) is subject to prescribed procedures¹⁵. While a person is suspended under these provisions from any office he may not perform any of the functions of the office (but his other rights as holder of the office are not affected)¹⁶.

- 1 le an office listed in the Constitutional Reform Act 2005 Sch 14 (see PARA 515B.18).
- 2 In ibid Pt 4 (ss 61-122, Schs 12-14) 'prescribed' means prescribed by regulations under s 115 (see PARA 516A.7) or, subject to s 117(2) (see PARA 516A.7), by rules under s 117: s 122.
- 3 Ibid s 108(1).
- 4 Ibid s 108(2).
- 5 'Judicial office' means (1) office as a senior judge, or (2) an office listed in ibid Sch 14 (see PARA 515B.18); and 'judicial office holder' means the holder of a judicial office: s 109(4). 'Senior judge' means any of these (1) Master of the Rolls; (2) President of the Queen's Bench Division; (3) President of the Family Division; (4) Chancellor of the High Court; (5) Senior President of Tribunals; (6) Lord Justice of Appeal; (7) puisne judge of the High Court: s 109(5) (amended by Tribunals, Courts and Enforcement Act 2007 Sch 8 para 63).
- 6 le the 2005 Act s 108.
- 7 Ibid s 108(3).
- 8 A person is subject to criminal proceedings if in any part of the United Kingdom proceedings against him for an offence have been begun and have not come to an end, and the times when proceedings are begun and come to an end for the purposes of this provision are such as may be prescribed: ibid s 109(2).
- 9 'Sentence' includes any sentence other than a fine (and 'serving' is to be read accordingly): ibid s 109(6).
- 10 Ibid s 108(4). See further NOTE 15.
- 11 Ibid s 108(5).
- 12 Ibid s 108(6). A person is subject to proceedings for an Address from the time when notice of a motion is given in each House of Parliament for an Address for the removal of the person from office, until the earliest of the following events (1) either notice is withdrawn; (2) either motion is amended so that it is no longer a motion for an address for removal of the person from office; (3) either motion is withdrawn, lapses or is disagreed to; (4) where an Address is presented by each House, a message is brought to each House from Her Majesty in answer to the Address: s 109(3).
- 13 Listed in ibid Sch 14 (see PARA 515B.18).
- 14 'Under investigation for an offence' has such meaning as may be prescribed: ibid s 109(8).
- 15 Ibid s 108(7). The times when a person becomes and ceases to be subject to prescribed procedures for the purposes of s 108(4) or (7) are such as may be prescribed: s 109(7).
- 16 Ibid s 108(8).

2. Applications to the Ombudsman

The following provisions¹ apply if an interested party² makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been (1) a failure to comply with prescribed procedures, or (2) some other maladministration³. The Ombudsman must carry out a review if the following three conditions are met⁴. The first condition is that the Ombudsman considers that a review is necessary⁵. The second condition is that (a) the application is made within the permitted period⁶, (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time⁷. The third condition is that the application is made in a form approved by the Ombudsman⁸. But the Ombudsman may not review the merits of a decision made by any person⁹. If any of the conditions¹⁰ is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman (i) may not carry out a review, and (ii) must inform the applicant accordingly¹¹.

1 le the Constitutional Reform Act 2005 s 110.

2 In ibid s 110, in relation to an application under s 110 for a review of the exercise of a regulated disciplinary function 'interested party' means (1) the judicial office holder in relation to whose conduct the function is exercised, or (2) any person who has made a complaint about that conduct in accordance with prescribed procedures: s 110(9). In s 110 and ss 111-113 (see PARAS 516A.3-516A.5), 'regulated disciplinary function' means any of the following (a) any function of the Lord Chancellor that falls within s 108(1) (see PARA 516A.1); (b) any function conferred on the Lord Chief Justice by s 108(3)-(7); (c) any function exercised under prescribed procedures in connection with a function falling within head (a) or (b): s 110(8). In the Constitutional Reform Act 2005 'functions' includes powers and duties: s 142. References in s 110 and s 111 to the exercise of a function include references to a decision whether or not to exercise the function: s 110(10).

3 Ibid s 110(1).

4 Ibid s 110(2).

5 Ibid s 110(3).

6 In ibid s 110, in relation to an application under s 110 for a review of the exercise of a regulated disciplinary function 'permitted period' means the period of 28 days beginning with the latest of (1) the failure or other maladministration alleged by the applicant; (2) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation; (3) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination: s 110(9).

7 Ibid s 110(4).

8 Ibid s 110(5).

9 Ibid s 110(6).

10 le in ibid s 110(3)-(5).

11 Ibid s 110(7).

3. Review by the Ombudsman

Where the Ombudsman is under a duty to carry out a review on an application¹, he must (1) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established; (2) decide what if any action to take². If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice³. If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination⁴.

1 Under the Constitutional Reform Act 2005 s 110 (see PARA 516A.2).

2 Under ibid s 111(2)-(7): s 111(1).

3 Ibid s 111(2). A recommendation under s 111(2) may be for the payment of compensation: s 111(3). Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates: s 111(4).

4 Ibid s 111(5). If a determination is set aside under s 115(5) (1) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and (2) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded: s 111(6). Section 111(6) is subject to any direction given by the Ombudsman under s 111(7) (a) for a previous investigation or review to be taken into account to any extent, or (b) for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again: s 111(7).

Section 111 is subject to s 112 (see PARA 516A.4): s 111(8).

4. Reports on reviews

Before determining his response to an application¹ the Ombudsman must prepare a draft of a report of the review carried out on the application². The draft report must state the Ombudsman's proposed response³. The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice⁴. If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal⁵. The Ombudsman must produce a final report that sets out (1) the Ombudsman's response to the application, including any changes made to it to give effect to a proposal⁶; (2) a statement of any proposal⁷ that is not given effect to⁸. The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice⁹. The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information (a) which relates to an identified or identifiable individual other than the applicant, and (b) whose disclosure by the Ombudsman to the applicant would (apart from this provision¹⁰) be contrary to provision relating to confidentiality¹¹. Each copy must be signed by the Ombudsman¹². No part of the Ombudsman's response to an application has effect until he has complied with the above provisions¹³.

1 In the Constitutional Reform Act 2005 s 112 references to the Ombudsman's response to an application are references to the findings and decisions referred to in s 111(1) (see PARA 516A.3): s 112(1).

2 Ibid s 112(2).

3 Ibid s 112(3).

4 Ibid s 112(4).

5 Ibid s 112(5).

6 Ie a proposal under ibid s 112(5).

7 Under ibid s 112(5).

8 Ibid s 112(6).

9 Ibid s 112(7).

10 Ie apart from ibid s 112(8).

11 Ie contrary to ibid s 139 (see PARA 521A.8): s 112(8).

12 Ibid s 112(9).

13 Ie ibid s 112(2)-(9): s 112(10).

5. References to the Ombudsman relating to conduct

The Ombudsman must investigate any matter referred to him by the Lord Chancellor or the Lord Chief Justice that relates to the exercise of one or more regulated disciplinary functions¹.

1 Constitutional Reform Act 2005 s 113(1). A matter referred to the Ombudsman under s 113(1) may relate to the particular exercise of a regulated disciplinary function or to specified descriptions of the exercise of such functions: s 113(2).

6. Reports on references

Where the Ombudsman carries out an investigation¹ he must prepare a draft of a report of the investigation². The draft report must state the Ombudsman's proposals as to (1) the findings he will make; (2) any recommendations he will make for action to be taken by any person in relation to the matter subject to investigation³. Those findings and recommendations are referred to in these provisions⁴ as the Ombudsman's response on the investigation⁵. The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice⁶. If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response on the investigation should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal⁷. The Ombudsman must produce a final report that sets out (a) the Ombudsman's response on the investigation, including any changes made to it to give effect to a proposal⁸; (b) a statement of any proposal⁹ that is not given effect to¹⁰. The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice¹¹. Each copy must be signed by the Ombudsman¹².

1 Under the Constitutional Reform Act 2005 s 113: see PARA 516A.5.

2 Ibid s 114(1). If the investigation relates to a matter which is the subject of a review on an application under s 110 (see PARA 516A.2), s 114(1) applies only when the Ombudsman has sent a copy of the final report on that review to the Lord Chancellor, the Lord Chief Justice and the applicant: s 114(2).

3 Ibid s 114(3).

4 Ibid s 114.

5 Ibid s 114(4).

6 Ibid s 114(5).

7 Ibid s 114(6).

8 Ibid s 114(6).

9 Under s 114(6).

10 Ibid s 114(7).

11 Ibid s 114(8).

12 Ibid s 114(9).

7. Regulations about procedures

The Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in (1) the investigation and determination of allegations by any person of misconduct by judicial office holders; (2) reviews and investigations (including the making of applications or references)¹.

Regulations under head (1) above may include provision as to any of the following (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise); (b) steps to be taken by a complainant before a complaint is to be investigated; (c) the conduct of an investigation, including steps to be taken by the office holder under investigation or by a complainant or other person; (d) time limits for taking any step and procedures for extending time limits; (e) persons by whom an investigation or part of an investigation is to be conducted; (f) matters to be determined by the Lord Chief Justice, the Lord Chancellor, the office holder under investigation or any other person; (g) requirements as to records of investigations; (h) requirements as to confidentiality of communications or proceedings; (i) requirements as to the publication of information or its provision to any person². The regulations (i) may require a decision as to the exercise of functions³ to be taken in accordance with findings made pursuant to prescribed procedures; (ii) may require that

prescribed steps be taken by the Lord Chief Justice or the Lord Chancellor in exercising those functions or before exercising them⁴. Where regulations under head (1) above impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint) (A) as may be prescribed by the regulations, or (B) as may be determined by the Lord Chief Justice and the Lord Chancellor or either of them in accordance with provisions so prescribed⁵. Regulations⁶ may (aa) provide for any prescribed requirement not to apply if the Lord Chief Justice and the Lord Chancellor so agree; (bb) make different provision for different purposes⁷.

Regulations⁸ may provide for provision of a prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor⁹. The rules are to be published in such manner as the Lord Chief Justice may determine with the agreement of the Lord Chancellor¹⁰.

1 Under the Constitutional Reform Act 2005 ss 110-112 (see PARAS 516A.2-516A.4): s 115. See Judicial Discipline (Prescribed Procedures) Regulations 2006, SI 2006/676 (amended by SI 2008/2098). As to regulations under the 2005 Act generally see s 144.

2 Ibid s 116(1).

3 Under ibid s 108 (see PARA 516A.1), or functions mentioned in s 108(1). In the Constitutional Reform Act 2005 'functions' includes powers and duties: s 142.

4 Ibid s 116(2).

5 Ibid s 116(3).

6 Under ibid s 115.

7 Ibid s 116(4).

Nothing in s 116 limits the generality of s 115: s 116(5).

8 Under ibid s 115.

9 Ibid s 117(1). But the provision that may be made by rules does not include (1) provision within s 116(2); (2) provision made for the purposes of s 108(7) or (8) (see PARA 516A.1) or 116(3): s 117(2).

10 Ibid s 117(3).

8. Extension of discipline provisions to other offices

Chapter 3 of Part 4 of the Constitutional Reform Act 2005¹ applies in relation to an office designated by the Lord Chancellor under these provisions² as it would apply if the office were listed in Schedule 14 to the Constitutional Reform Act 2005³. The Lord Chancellor may by order designate any office, not listed in Schedule 14, the holder of which he has power to remove from office⁴. An order under these provisions may be made only with the agreement of the Lord Chief Justice⁵.

1 Ie the Constitutional Reform Act 2005 ss 108-121.

2 Ie ibid s 118.

3 Ibid s 118(1). As to Sch 14 see PARA 515B.18.

4 Ibid 118(2). See Discipline of Coroners (Designation) Order 2006, SI 2006/677; Discipline of Judges (Designation) Order 2009, SI 2009/590. As to orders under the Constitutional Reform Act 2005 generally see s 144.

5 Ibid 118(3).

9. Delegation of functions

The Lord Chief Justice may nominate a judicial office holder¹ to exercise any of his functions under the relevant provisions².

1 As defined in the Constitutional Reform Act 2005 s 109(4) (see PARA 516A.1).

2 Ibid s 119(1). The relevant provisions are (1) s 108(3)-(7) (see PARA 516A.1); (2) s 111(2) (see PARA 516A.3); (3) s 112 (see PARA 516A.4); (4) s 116(3)(b) (see PARA 516A.7); s 119(2).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS); ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of

functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

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517. Precedence of judges.

When sitting in the Court of Appeal¹ the Lord Chief Justice² and the Master of the Rolls³ rank in that order⁴. Lords of Appeal in Ordinary⁵ and persons who have been Lord Chancellor⁶ rank next after the Master of the Rolls and, among themselves, according to the priority of the dates on which they respectively became Lords of Appeal in Ordinary or Lord Chancellor, as the case may be⁷. Subject to the above, the President of the Family Division⁸ ranks next after the Master of the Rolls⁹ and the Vice-Chancellor¹⁰ ranks next after the President of the Family Division¹¹.

The vice-president or vice-presidents of the Divisions of the Court of Appeal¹² rank next after the Vice-Chancellor; and if there are two vice-presidents of those Divisions, they rank, among themselves, according to the priority of the dates on which they respectively became vice-presidents¹³.

The Lords Justices of Appeal¹⁴ (other than the vice-president or vice-presidents of the Divisions of the Court of Appeal) rank after the ex-officio judges of the Court of Appeal¹⁵ and, among themselves, according to the priority of the dates on which they respectively became judges of that court¹⁶.

The puisne judges of the High Court¹⁷ rank next after the judges of the Court of Appeal and, among themselves, according to the priority of the dates on which they respectively became judges of the High Court¹⁸.

If and so long as any holder of the office of Vice-Chancellor of the County palatine of Lancaster is also a circuit judge¹⁹, he takes judicial precedence next after the judges of the High Court²⁰.

1 As to the Court of Appeal see PARA 634 et seq post.

2 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

3 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 Supreme Court Act 1981 s 13(1)(a).

5 As to the Lords of Appeal in Ordinary see PARA 369 ante.

6 As to the office of Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Supreme Court Act 1981 s 13(1)(b). As to the precedence of the Lords of Appeal in Ordinary in the House of Lords see PARA 371 ante.

8 As to the President of the Family Division see PARA 515; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

9 Supreme Court Act 1981 s 13(2).

10 As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

11 Supreme Court Act 1981 s 13(3).

12 As to the Divisions of the Court of Appeal see PARA 634 post.

13 Supreme Court Act 1981 s 13(4).

14 As to the Lords Justices of Appeal see PARA 515 ante, para 637 post.

15 As to the ex-officio judges of the Court of Appeal see PARA 637 post.

16 Supreme Court Act 1981 s 13(5).

17 As to the puisne judges of the High Court see PARA 515 ante, paras 602, 619 post.

18 Supreme Court Act 1981 s 13(6).

19 As to circuit judges see PARA 522 et seq post.

20 See the Courts Act 1971 s 16(5), Sch 2 Pt II para 4. The current holder of that office is the supervising Chancery judge for the Northern and Northern Eastern circuits: see the Lord Chancellor's Department *Senior Judiciary List* (2002) available at the date at which this title states the law at www.lcd.gov.uk. See also *The Chancery Guide* (2000 Edn) Ch 12. As to such supervising judges see PARA 504 ante.

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501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in

damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

517 Precedence of judges

TEXT AND NOTES--For 'the President of the Family Division ranks next after the Master of the Rolls' read 'the President of the Queen's Bench Division ranks next after the Master of the Rolls': 1981 Act s 13(2) (substituted by Constitutional Reform Act 2005 Sch 4 para 125(2)). The President of the Family Division ranks next after the President of the Queen's Bench Division: 1981 Act s 13(2A) (added by 2005 Act s 125(2)). For 'the Vice Chancellor' read 'the Chancellor of the High Court': 1981 Act s 13(3), (4) (amended by 2005 Act Sch 4 para 125(2)).

TEXT AND NOTE 7--1981 Act s 13(1)(b) amended: the 2005 Act Sch 17 para 22(5) (in force 1 October 2009: SI 2009/1604).

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518. Salaries etc of judges of the Supreme Court.

There must be paid to judges of the Supreme Court¹, other than the Lord Chancellor², such salaries as may be determined by the Lord Chancellor with the concurrence of the Treasury³. Any salary so payable may be increased, but not reduced, by a determination or further determination under these provisions⁴. Salaries so payable are charged on and paid out of the Consolidated Fund⁵.

There must also be paid out of money provided by Parliament to any judge of the Court of Appeal⁶ or of the High Court⁷, in addition to his salary, such allowances as may be determined by the Lord Chancellor with the concurrence of the Treasury⁸.

Pensions are payable to or in respect of the judges of the Supreme Court in accordance with either the Judicial Pensions Act 1981⁹ or, in the case of a judge who is a person to whom Part I of the Judicial Pensions and Retirement Act 1993¹⁰ applies, in accordance with that Act¹¹.

1 As to the appointment, tenure of office and precedence of the judges of the Supreme Court see PARAS 515-517 ante; and as to the Supreme Court of England and Wales see PARA 601 et seq post.

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Supreme Court Act 1981 s 12(1). The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

4 Supreme Court Act 1981 s 12(3). Judges were to be paid the same salaries as at 1 January 1982 until the first determination under s 12 (as amended): see s 12(2). Salaries are currently set following a recommendation by the non-statutory Senior Salaries Review Body and are normally increased as from 1 April each year. As to the salaries payable for 2002-2003 and 2003-2004 see the *Times* (1 March 2002) p 12.

5 Supreme Court Act 1981 s 12(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

6 As to the Court of Appeal judges see PARA 515 ante, para 637 post.

7 As to High Court judges see PARA 515 ante, paras 602, 619 post.

8 Supreme Court Act 1981 s 12(6). See also note 3 supra.

9 Ie in accordance with the Judicial Pensions Act 1981 s 2: see PARA 556 post.

10 Ie the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq post.

11 Supreme Court Act 1981 s 12(7). As to persons to whom the Judicial Pensions and Retirement Act 1993 applies see PARA 538 post.

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501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in

damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

518 Salaries etc of judges of the [Senior Courts]

TEXT AND NOTES--The Lord Chancellor's functions under the 1981 Act s 12 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 3--1981 Act s 12(1) amended: 2005 Act Sch 4 para 124, Sch 18 Pt 2.

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519. Judges and ex-judges giving assistance for the transaction of the judicial business of the Supreme Court.

Up until the day when he attains the age of 75 years¹, a person listed below may act at any time, at the request of the appropriate authority², as a judge of a relevant court³ specified in the request or, if the request relates to a particular Division of a relevant court so specified, as a judge of that court in that Division⁴. The relevant judges and ex-judges and the courts where they are competent to act on such a request are:

- 83 (1) a judge of the Court of Appeal⁵ in relation to the High Court⁶ and the Crown Court⁷;
- 84 (2) a person who has been a judge of the Court of Appeal, in relation to the Court of Appeal, the High Court and the Crown Court⁸;
- 85 (3) a puisne judge of the High Court⁹, in relation to the Court of Appeal¹⁰;
- 86 (4) a person who has been a puisne judge of the High Court, in relation to the Court of Appeal, the High Court and the Crown Court¹¹;
- 87 (5) a circuit judge¹², in relation to the High Court and the Criminal Division of the Court of Appeal¹³; and
- 88 (6) a recorder¹⁴, in relation to the High Court¹⁵.

In the case of such a request to a Lord Justice of Appeal to act in the High Court or of any such request to a puisne judge of the High Court or a circuit judge, it is the duty of the person to whom the request is made to comply with it¹⁶.

If it appears to the Lord Chancellor that it is expedient as a temporary measure to make an appointment under these provisions in order to facilitate the disposal of business in the High

Court or the Crown Court, he may appoint a person qualified for appointment as a puisne judge of the High Court to be a deputy judge of the High Court during such period or on such occasions as the Lord Chancellor thinks fit; and during the period or on the occasions for which a person is so appointed as a deputy judge he may act as a puisne judge of the High Court¹⁷. No such appointment may be such as to extend beyond the day on which he attains the age of 70, but this is subject to the Lord Chancellor's power¹⁸ to authorise continuance in office up to the age of 75¹⁹.

Every person while acting under the provisions set out above is to be treated for all purposes as, and accordingly may perform any of the functions of, a judge of the court in which he is acting²⁰, subject to certain restrictions in the case of a circuit judge or a recorder²¹. Such a person is not, however, to be treated as a judge of the court in which he is acting for the purposes of the statutory provision attaching a clerk to certain judges²² or of any statutory provision relating to the appointment, retirement, removal or disqualification of judges of that court, the tenure of office and oaths to be taken by such judges or the remuneration, allowances or pensions of such judges²³. Nor is he to be treated²⁴ as having been a judge of a court in which he has acted only under the above provisions²⁵.

Such remuneration and allowances as the Lord Chancellor may, with the concurrence of the Treasury²⁶, determine may be paid out of money provided by Parliament to any person who has been a Lord of Appeal in Ordinary²⁷ or a judge of the Court of Appeal or of the High Court and who is acting as mentioned above by virtue of these provisions²⁸. Remuneration and allowances may be similarly determined and paid to any deputy judge of the High Court appointed as described above²⁹.

1 See the Supreme Court Act 1981 s 9(1A) (s 9(1A), (4A) added, and s 9(6)(b) amended, by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 5).

2 'The appropriate authority' means: (1) in the case of a request to a judge of the High Court or a circuit judge to act in the Criminal Division of the Court of Appeal as a judge of that court, the Lord Chief Justice or, at any time when the Lord Chief Justice is unable to make such a request himself or there is a vacancy in the office of Lord Chief Justice, the Master of the Rolls; and (2) in any other case, the Lord Chancellor: Supreme Court Act 1981 s 9(2) (s 9(1), (2), (5) amended and s 9(6A) added, by the Criminal Justice and Public Order Act 1994 s 52). As to the Lord Chief Justice and the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 'Relevant court', in the case of a person with any entry in the Supreme Court Act 1981 s 9(1), Table col 1 (as amended) means a court specified in relation to that entry in Table col 2 (as amended): s 9(2).

4 Ibid s 9(1) (as amended: see note 2 supra).

5 As to the judges of the Court of Appeal see PARA 515 ante, para 637 post.

6 As to the High Court see PARA 602 et seq post.

7 Supreme Court Act 1981 s 9(1), Table item 1. As to the Crown Court see PARA 621 et seq post.

8 Ibid s 9(1), Table item 2.

9 As to the judges of the High Court see PARA 515 ante, paras 602, 619 post.

10 Supreme Court Act 1981 s 9(1), Table item 3.

11 Ibid s 9(1), Table item 4.

12 As to circuit judges see PARA 522 post.

13 Ibid s 9(1), Table item 5 (as amended: see note 2 supra). No request may be made to a circuit judge to act as a judge of a court of the Criminal Division of the Court of Appeal, however, unless he is approved for the time being by the Lord Chancellor for the purpose of acting as a judge of that Division: s 9(2) (as so amended).

- 14 As to recorders see PARA 526 post.
- 15 Supreme Court Act 1981 s 9(1), Table item 6 (item 6 added by the Administration of Justice Act 1982 s 58).
- 16 Supreme Court Act 1981 s 9(3).
- 17 Ibid s 9(4). Section 9(4) is expressed to be without prejudice to the Courts Act 1971 s 24 (as substituted and amended) (power to appoint deputy circuit judges and assistant recorders (now all known as recorders)): see PARAS 525-526 post.
- 18 Ie under the Judicial Pensions and Retirement Act 1993 s 26(4)-(6): see PARA 535 post.
- 19 Supreme Court Act 1981 s 9(4A) (as added: see note 1 supra).
- 20 Ibid s 9(5) (as amended: see note 2 supra).
- 21 A circuit judge or recorder so acting may not exercise any of the powers conferred on a single judge by the Criminal Appeal Act 1968 ss 31, 44 (as amended) (powers of single judge in connection with appeals to the Court of Appeal and appeals from the Court of Appeal to the House of Lords: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARAS 1854, 1972): Supreme Court Act 1981 s 9(6A) (as added: see note 2 supra).
- 22 Ie for the purposes of ibid s 98(2): see PARA 671 post.
- 23 Ibid s 9(5)(a).
- 24 Ie subject to the Judicial Pensions and Retirement Act 1993 s 27: see PARA 536 post.
- 25 Supreme Court Act 1981 s 9(6)(b).
- 26 The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.
- 27 As to Lords of Appeal in Ordinary see PARA 369 ante.
- 28 Supreme Court Act 1981 s 9(8)(a).
- 29 Ibid s 9(8)(b).

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501-579 The Administration of the [Senior Courts] and County Courts

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515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

519 Judges and ex-judges giving assistance for the transaction of the judicial business of the [Senior Courts]

TEXT AND NOTES--Supreme Court Act 1981 s 9 (now Senior Courts Act 1981 s 9) further amended: Constitutional Reform Act 2005 Sch 4 para 121, Sch 18 Pt 2.

NOTE 2--1981 Act s 9(6A) amended: Courts Act 2003 Sch 8 para 260.

NOTE 13--See *Bailey v Dargue* [2008] EWHC 2903 (Ch), [2009] BPIR 1, [2008] All ER (D) 275 (Nov) (circuit chancery judge had jurisdiction to hear appeal against bankruptcy order).

NOTE 15--See *Baldock v Webster* [2004] EWCA Civ 1869, [2006] QB 315 (recorder who mistakenly sat on High Court business had de fact jurisdiction).

NOTE 21--In 1981 Act s 9(6A) for 'House of Lords' read 'Supreme Court': 2005 Act Sch 9 para 36(2) (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTES 28, 29--The Lord Chancellor's function under the 1981 Act s 9(8) is a protected function for the purposes of the 2005 Act s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 28--1981 Act s 9(8)(a) amended: 2005 Act Sch 17 para 22(3) (in force 1 October 2009: SI 2009/1604).

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520. Judges capable of acting in cases relating to rates and taxes.

A judge of the Supreme Court¹ or of the Crown Court² is not to be incapable of acting as such in any proceedings by reason of being, as one of a class of ratepayers, taxpayers or persons of any other description, liable in common with others to pay, or contribute to, or benefit from, any rate or tax³ which may be increased, reduced or in any way affected by those proceedings⁴.

¹ As to the Supreme Court see PARA 601 post; and as to judges of the Supreme Court see PARAS 515-519 ante.

² As to the Crown Court see PARA 621 et seq post.

³ For these purposes, 'rate or tax' means any rate, tax, duty or liability, whether public, general or local, and includes any fund formed from the proceeds of any such rate, tax, duty or liability and any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such rate, tax, duty or liability are or might be applied: Supreme Court Act 1981 s 14(2).

⁴ Ibid s 14(1). Section 14 protects such judges from any suggestion of bias on the ground of so acting. As to natural justice and the rule against bias see generally JUDICIAL REVIEW vol 61 (2010) PARA 631 et seq.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see

LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/521. Judges holding office in European or international courts.

521. Judges holding office in European or international courts.

A holder of a United Kingdom judicial office may hold office in a relevant international court¹ without being required to relinquish the United Kingdom judicial office². In relation to England and Wales, 'United Kingdom judicial office' means the office of Lord Justice of Appeal, Justice of the High Court or circuit judge³.

A holder of a United Kingdom judicial office who also holds office in a relevant international court is not required to perform any duties as the holder of the United Kingdom judicial office but does not count as holding the United Kingdom judicial office for the purposes of specified enactments⁴ relating to judicial salaries, pensions and numbers⁵.

The appropriate minister⁶ may make, by order made by statutory instrument, such transitional provision in relation to a holder of a United Kingdom judicial office who has ceased to hold office in a relevant international court, including, in particular, provision for a temporary increase in the maximum number of judges, as he considers appropriate⁷.

Similar provision is made in relation to a person holding such judicial office who is appointed to the European Court of Human Rights ('ECtHR'). A Lord Justice of Appeal, Justice of the High Court or circuit judge may become a judge of the ECtHR without being required to relinquish his office⁸. He is not required to perform the duties of such a judicial office while he is a judge of the ECtHR⁹. In respect of any period during which he is a judge of the ECtHR, a Lord Justice of Appeal or Justice of the High Court is not to count as a judge of the relevant court for the purposes of the statutory provisions relating to the maximum number of judges¹⁰ nor as a judge of the Supreme Court¹¹ for the purposes of the statutory provisions¹² relating to judicial salaries¹³; and a circuit judge is not to count as such for the purposes of the statutory provisions¹⁴ relating to salaries¹⁵. Special provision is made about judicial pensions in relation to the holder of a judicial office who serves as a judge of the ECtHR¹⁶. The Lord Chancellor may by order make such transitional provision (including, in particular, provision for a temporary increase in the maximum number of judges) as he considers appropriate in relation to any holder of such a judicial office who has completed his service as a judge of the ECtHR¹⁷.

1 For these purposes, 'relevant international court' means any court established for any purposes of the European Communities, or any international court (apart from the European Court of Human Rights) which is designated for these purposes by the Lord Chancellor or the Secretary of State: Access to Justice Act 1999 s 68(2). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the European Court of Human Rights see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 179 et seq.

2 Access to Justice Act 1999 s 68(1).

3 Ibid s 68(2). As to Lords Justices of Appeal see PARA 515 ante, para 637 post; as to High Court judges see PARA 515 ante, paras 602, 619 post; and as to circuit judges see PARA 522 post.

4 In relation to England and Wales, the specified enactments are: (1) the Supreme Court Act 1981 s 12(1)-(6) (as amended) (see PARA 518 ante) and the Courts Act 1971 s 18 (as amended) (see PARA 524 post) (judicial salaries); (2) the Judicial Pensions and Retirement Act 1993, the Judicial Pensions Act 1981, or any scheme established by and in accordance with those Acts (see PARA 537 et seq post) (judicial pensions); or (3) the Supreme Court Act 1981 s 2(1) (as amended) (see PARA 637 post) or s 4(1) (as amended) (see PARA 602 post) (judicial numbers): Access to Justice Act 1999 s 68(3)(a)-(c).

5 Ibid s 68(3).

6 For these purposes, in relation to England and Wales 'the appropriate minister' means the Lord Chancellor: ibid s 68(6)(a). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Ibid s 68(5). A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 68(7). At the date at which this title states the law, no such order had been made.

8 Human Rights Act 1998 s 18(1)(a), (2).

9 Ibid s 18(3).

10 Ie for the purposes of the Supreme Court Act 1981 s 2(1), 4(1) (as amended): see PARAS 637, 602 respectively post.

11 As to the Supreme Court of England and Wales see PARA 601 et seq post.

12 Ie for the purposes of the Supreme Court Act 1981 s 12(2)-(6) (as amended): see PARA 518 ante.

13 Human Rights Act 1998 s 18(4)(a).

14 Ie for the purposes of the Courts Act 1971 s 18 (as amended): see PARA 524 post.

15 Human Rights Act 1998 s 18(4)(d).

16 See ibid s 18(6), Sch 4; and PARA 537 post.

17 Ibid s 18(7). Any such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 20(1), (5). At the date at which this title states the law, no such order had been made.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial

post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

521 Judges holding office in European or international courts

TEXT AND NOTES 1-7--Access to Justice Act 1999 s 68 amended: Constitutional Reform Act 2005 Sch 4 para 281.

TEXT AND NOTE 17--Human Rights Act 1998 s 18(7A)-(7D) added: 2005 Act Sch 4 para 278.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/521A. Appointment of judges.

521A. Appointment of judges.

1. Qualification for appointment

A person is not qualified to be appointed a judge of the Supreme Court¹ unless he has (at any time) (1) held high judicial office² for a period of at least two years, (2) satisfied the judicial-appointment eligibility condition on a 15-year basis; or (3) been a qualifying practitioner for a period of at least 15 years³.

¹ In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

2 In *ibid* Pt 3 (1) 'high judicial office' means office as a judge of any of the following courts (a) the Supreme Court; (b) the Court of Appeal in England and Wales; (c) the High Court in England and Wales; (d) the Court of Session; (e) the Court of Appeal in Northern Ireland; (f) the High Court in Northern Ireland; or as a Lord of Appeal in Ordinary; (2) a person appointed to the office of Lord Chancellor on or after 12 June 2003 who holds, or held, office of a kind referred to in head (1) ('the qualifying office') is to be regarded as holding, or having held, high judicial office only if (i) he has ceased to be Lord Chancellor by virtue of that appointment, and (ii) he holds, or held, the qualifying office otherwise than by virtue of that appointment as Lord Chancellor: s 60(2).

3 *Ibid* s 25(1) (amended by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 41(2)). A person is a qualifying practitioner for the purposes of s 25 at any time when (1) he is an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or (2) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland: Constitutional Reform Act 2005 s 25(2) (amended by 2007 Act Sch 10 para 41(3)), Sch 23 Pt 2.

2. Selection of members of the Court

The following provisions¹ apply to a recommendation for an appointment to one of the following offices (1) judge of the Supreme Court; (2) President of the Court; (3) Deputy President of the Court². A recommendation may be made only by the Prime Minister³. The Prime Minister (a) must recommend any person whose name is notified to him⁴; (b) may not recommend any other person⁵. A person who is not a judge of the Court must be recommended for appointment as a judge if his name is notified to the Prime Minister for an appointment as President or Deputy President⁶. If there is a vacancy in one of the offices⁷, or it appears to him that there will soon be such a vacancy, the Lord Chancellor must convene a selection commission for the selection of a person to be recommended⁸.

1 *Ie* the Constitutional Reform Act 2005 s 26.

2 *Ibid* s 26(1).

3 *Ibid* s 26(2).

4 Under *ibid* s 29 (see PARA 521A.5).

5 *Ibid* s 26(3).

6 *Ibid* s 26(4).

7 *Ie* one of the offices mentioned in *ibid* s 26(1).

8 *Ibid* s 26(5). Schedule 8 is about selection commissions: s 26(6). Section 26(5) is subject to Sch 8 Pt 3: s 26(7). Sections 27-31 (see PARAS 521A.3-521A.7) apply where a selection commission is convened under s 26: s 26(8).

3. Selection process

The commission must (1) determine the selection process to be applied, (2) apply the selection process, and (3) make a selection accordingly¹. As part of the selection process the commission must consult each of the following (a) such of the senior judges² as are not members of the commission and are not willing to be considered for selection; (b) the Lord Chancellor; (c) the First Minister in Scotland; (d) the First Minister for Wales; (e) the Secretary of State for Northern Ireland³. If for any part of the United Kingdom⁴ no judge of the courts of that part is to be consulted⁵, the commission must consult as part of the selection process the most senior judge of the courts of that part who is not a member of the commission and is not willing to be considered for selection⁶. The following provisions⁷ apply to any selection⁸. Selection must be on merit⁹. A person may be selected only if he meets certain requirements¹⁰. A person may not be selected if he is a member of the commission¹¹. In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom¹². The

commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision of the Constitutional Reform Act 2005) in making a selection¹³. Any selection must be of one person only¹⁴.

1 Constitutional Reform Act 2005 s 27(1).

2 In *ibid* Pt 3 (ss 23-60, Schs 8-11) 'the senior judges' means (1) the judges of the Supreme Court; (2) the Lord Chief Justice of England and Wales; (3) the Master of the Rolls; (4) the Lord President of the Court of Session; (5) the Lord Chief Justice of Northern Ireland; (6) the Lord Justice Clerk; (7) the President of the Queen's Bench Division; (8) the President of the Family Division; (9) the Chancellor of the High Court: s 60(1).

3 *Ibid* s 27(2) (amended by SI 2007/1388).

4 In the 2005 Act Pt 3 'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland: s 60(1).

5 Under head (a) in the TEXT.

6 2005 Act s 27(3).

7 *Ie* *ibid* s 27(5)-(10).

8 *Ie* any selection under *ibid* s 27 or s 31 (see PARA 521A.7): s 27(4).

9 *Ibid* s 27(5).

10 *Ie* the requirements of *ibid* s 25 (see PARA 521A.1): s 27(6).

11 *Ibid* s 27(7).

12 *Ibid* s 27(8).

13 *Ibid* s 27(9).

14 *Ibid* s 27(10).

4. Report

After complying with the provisions relating to the selection process¹ the commission must submit a report to the Lord Chancellor². The report must (1) state who has been selected; (2) state the senior judges consulted³ and any judge consulted⁴; (3) contain any other information required by the Lord Chancellor⁵. The report must be in a form approved by the Lord Chancellor⁶. After submitting the report the commission must provide any further information the Lord Chancellor may require⁷. When he receives the report the Lord Chancellor must consult each of the following: (a) the senior judges consulted⁸; (b) any judge consulted⁹; (c) the First Minister in Scotland; (d) the First Minister for Wales; (e) the Secretary of State for Northern Ireland¹⁰.

1 *Ie* after complying with the Constitutional Reform Act 2005 s 27 (see PARA 521A.3).

2 *Ibid* s 28(1).

3 Under *ibid* s 27(2)(a) (see PARA 521A.3, head (a) in the TEXT).

4 Under *ibid* s 27(3) (see PARA 521A.3).

5 *Ibid* s 28(2).

6 *Ibid* s 28(3).

7 *Ibid* s 28(4).

8 Under *ibid* s 27(2)(a) (see PARA 521A.3, head (a) in the TEXT).

9 Under *ibid* s 27(3) (see PARA 521A.3).

10 *Ibid* s 28(5) (amended by SI 2007/1388).

5. The Lord Chancellor's options

The following provisions¹ refer to the following stages--

Stage 1	where a person has been selected under the Constitutional Reform Act 2005 s 27 ²
Stage 2	where a person has been selected following a rejection or reconsideration at stage 1
Stage 3	where a person has been selected following a rejection or reconsideration at stage 2 ³

At stage 1 the Lord Chancellor must do one of the following (1) notify the selection⁴; (2) reject the selection; (3) require the commission to reconsider the selection⁵. At stage 2 the Lord Chancellor must do one of the following (a) notify the selection; (b) reject the selection, but only if it was made following a reconsideration at stage 1; (c) require the commission to reconsider the selection, but only if it was made following a rejection at stage 1⁶. At stage 3 the Lord Chancellor must notify the selection⁷.

1 *Ie* the Constitutional Reform Act 2005 s 29.

2 See PARA 521A.3.

3 Constitutional Reform Act 2005 s 29(1).

4 In *ibid* Pt 3 (ss 23-60, Schs 8-11) references to the Lord Chancellor notifying a selection are references to his notifying to the Prime Minister the name of the person selected: s 29(6).

5 *Ibid* s 29(2).

6 *Ibid* s 29(3).

7 Unless *ibid* s 29(5) applies and he makes a notification under it: s 29(4). If a person whose selection the Lord Chancellor required to be reconsidered at stage 1 or 2 was not selected again at the next stage, the Lord Chancellor may at stage 3 notify that person's name to the Prime Minister: s 29(5).

6. Exercise of powers to reject or require reconsideration

The power of the Lord Chancellor¹ to reject a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion, the person selected is not suitable for the office concerned². The power of the Lord Chancellor³ to require the commission to reconsider a selection at stage 1 or 2 is exercisable only on the grounds that, in the Lord Chancellor's opinion (1) there is not enough evidence that the person is suitable for the office concerned, (2) there is evidence that the person is not the best candidate on merit, or (3) there is not enough evidence that if the person were appointed the judges of the Court would between them have knowledge of, and experience of practice in, the law of each part of the United Kingdom⁴. The Lord Chancellor must give the commission reasons in writing for rejecting or requiring reconsideration of a selection⁵.

1 Under the Constitutional Reform Act 2005 s 29: see PARA 521A.5.

2 *Ibid* s 30(1).

3 Under *ibid* s 29.

4 *Ibid* s 30(2).

5 *Ibid* s 30(3).

7. Selection following rejection or requirement to reconsider

If¹ the Lord Chancellor rejects or requires reconsideration of a selection at stage 1 or 2, the commission must select a person in accordance with the following provisions². If the Lord Chancellor rejects a selection, the commission (1) may not select the person rejected, and (2) where the rejection is following reconsideration of a selection, may not select the person (if different) whose selection it reconsidered³. If the Lord Chancellor requires a selection to be reconsidered, the commission (a) may select the same person or a different person, but (b) where the requirement is following a rejection, may not select the person rejected⁴. The commission must inform the Lord Chancellor of the person selected following a rejection or requirement to reconsider⁵.

1 Under the Constitutional Reform Act 2005 s 29: see PARA 521A.5.

2 *Ie* in accordance with *ibid* s 31: s 31(1).

3 *Ibid* s 31(2).

4 *Ibid* s 31(3).

5 *Ibid* s 31(4).

8. Confidentiality

A person who obtains confidential information¹, or to whom confidential information is provided, under or for the purposes of a relevant provision² must not disclose it except with lawful authority³. Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies: (1) the disclosure is with the consent of each person who is a subject of the information⁴; (2) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision; (3) the disclosure is for (and is necessary for) the exercise of functions under the Senior Courts Act 1981⁵ or a decision whether to exercise them; (4) the disclosure is for (and is necessary for) the exercise of powers⁶, or a decision whether to exercise them; (5) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description⁷. An opinion or other information given by one identified or identifiable individual (A) about another (B) (a) is information that relates to both; (b) must not be disclosed to B without A's consent⁸. These provisions⁹ do not prevent the disclosure with the agreement of the Lord Chancellor and the Lord Chief Justice of information as to disciplinary action taken in accordance with a relevant provision¹⁰. These provisions do not prevent the disclosure of information which is already, or has previously been, available to the public from other sources¹¹. A contravention of these provisions in respect of any information is actionable, subject to the defences and other incidents applying to actions for breach of statutory duty¹². But it is actionable only at the suit of a person who is a subject of the information¹³.

1 Information is confidential if it relates to an identified or identifiable individual (a 'subject'): Constitutional Reform Act 2005 s 139(3).

2 These are the relevant provisions (1) *ibid* ss 26-31 (see PARAS 521A.2-521A.7); (2) Pt 4 (ss 61-122, Schs 12-14); (3) regulations and rules under Pt 4: s 139(2).

- 3 Ibid s 139(1).
- 4 But this is subject to ibid s 139(5).
- 5 Ie the Senior Courts Act 1981 s 11(3A).
- 6 Ie powers to which the Constitutional Reform Act 2005 s 108 applies.
- 7 Ibid s 139(4).
- 8 Ibid s 139(5).
- 9 Ie ibid s 139.
- 10 Ibid s 139(6).
- 11 Ibid s 139(7).
- 12 Ibid s 139(8).
- 13 Ibid s 139(9).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and

prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

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521B. Terms of appointment.

1. Oath of allegiance and judicial oath

A person who is appointed as President of the Court must, as soon as may be after accepting office, take the required oaths¹ in the presence of (1) the Deputy President, or (2) if there is no Deputy President, the senior ordinary judge². A person who is appointed as Deputy President of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of (a) the President, or (b) if there is no President, the senior ordinary judge³. A person who is appointed as a judge of the Supreme Court must, as soon as may be after accepting office, take the required oaths in the presence of (i) the President, or (ii) if there is no President, the Deputy President, or (iii) if there is no President and no Deputy President, the senior ordinary judge⁴.

¹ In the Constitutional Reform Act 2005 s 32 'required oaths' means (1) the oath of allegiance, and (2) the judicial oath, as set out in the Promissory Oaths Act 1868: Constitutional Reform Act 2005 s 32(6). See further CONSTITUTIONAL LAW AND HUMAN RIGHTS.

² Ibid s 32(1). See further NOTE 3. In Pt 3 (ss 23-60, Schs 8-11) (1) 'ordinary judge' means a judge of the Supreme Court who is not the President or the Deputy President of the Court; (2) the senior ordinary judge at any time is, of the ordinary judges at that time, the one who has served longest as a judge of the Court (whether over one or more periods and whether or not including one or more previous periods as President or Deputy President): s 60(3). Service as a Lord of Appeal in Ordinary counts as service as a judge of the Court for the purposes of head (2): s 60(4).

³ Ibid s 32(2). Section 32(1) and (2) apply whether or not the person appointed as President or Deputy President has previously taken the required oaths in accordance with s 32 after accepting another office: s 32(4).

⁴ Ibid s 32(3). Section 32(3) does not apply where a person is first appointed as a judge of the Court upon appointment to the office of President or Deputy President: s 32(5).

2. Tenure

A judge of the Supreme Court holds that office during good behaviour, but may be removed from it on the address of both Houses of Parliament¹.

¹ Constitutional Reform Act 2005 s 33.

3. Salaries and allowances

A judge of the Supreme Court is entitled to a salary¹. The amount of the salary is to be determined by the Lord Chancellor with the agreement of the Treasury². Salaries payable under these provisions³ are to be charged on and paid out of the Consolidated Fund of the United Kingdom⁴. Any allowance determined by the Lord Chancellor with the agreement of the Treasury may be paid to a judge of the Court out of money provided by Parliament⁵.

1 Constitutional Reform Act 2005 s 34(1).

2 Ibid s 34(2). Until otherwise determined under s 34(2), the amount is that of the salary of a Lord of Appeal in Ordinary immediately before the commencement of s 23 (ie 1 October 2009: see PARA 601); s 34(3). A determination under s 34(2) may increase but not reduce the amount: s 34(4).

3 Ie ibid s 34.

4 Ibid s 34(5).

5 Ibid s 34(6).

4. Resignation and retirement

A judge of the Supreme Court may at any time resign that office by giving the Lord Chancellor notice in writing to that effect¹. The President or Deputy President of the Court may at any time resign that office (whether or not he resigns his office as a judge) by giving the Lord Chancellor notice in writing to that effect².

1 Constitutional Reform Act 2005 s 35(1).

2 Ibid s 35(2).

5. Medical retirement

The following provisions¹ apply if the Lord Chancellor is satisfied by means of a medical certificate that a person holding office as a judge of the Supreme Court (1) is disabled by permanent infirmity from the performance of the duties of his office, and (2) is for the time being incapacitated from resigning his office². The Lord Chancellor may by instrument under his hand declare the person's office to have been vacated³. A declaration by instrument⁴ has the same effect for all purposes as if the person had, on the date of the instrument, resigned his office⁵. But such a declaration has no effect unless it is made (a) in the case of an ordinary judge, with the agreement of the President and Deputy President of the Court; (b) in the case of the President, with the agreement of the Deputy President and the senior ordinary judge; (c) in the case of the Deputy President, with the agreement of the President and the senior ordinary judge⁶.

1 Ie the Constitutional Reform Act 2005 s 36.

2 Ibid s 36(1).

3 Ibid s 36(2).

4 Under ibid s 36(2).

5 Ibid s 36(3).

6 Ibid s 36(4).

UPDATE**501-579 The Administration of the [Senior Courts] and County Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/A. JUDGES OF THE SUPREME COURT/521C. Acting judges.

521C. Acting judges.

The following provisions are in force on 1 October 2009: SI 2009/1604.

1. Acting judges

At the request of the President of the Supreme Court any of the following may act as a judge of the Court: (1) a person who holds office as a senior territorial judge¹; (2) a member of the supplementary panel². Every person while acting under these provisions³ is⁴ to be treated for all purposes as a judge of the Supreme Court (and so may perform any of the functions⁵ of a judge of the Court)⁶. Such remuneration and allowances as the Lord Chancellor may with the agreement of the Treasury determine may be paid out of money provided by Parliament to any person who acts as a judge of the Court under the above provisions⁷.

1 In the Constitutional Reform Act 2005 s 38 'office as a senior territorial judge' means office as any of the following (1) a judge of the Court of Appeal in England and Wales; (2) a judge of the Court of Session, but only if the holder of the office is a member of the First or Second Division of the Inner House of that Court; (3) a judge of the Court of Appeal in Northern Ireland, unless the holder holds the office only by virtue of being a puisne judge of the High Court: s 38(8).

2 Under *ibid* s 39 (see PARA 521C.2): s 38(1). A request under s 38(1) may be made by the Deputy President of the Court if there is no President or the President is unable to make that request: s 38(2).

3 *Ie* under *ibid* s 38.

4 Subject to *ibid* s 38(5) and (6).

5 In the Constitutional Reform Act 2005 'functions' includes powers and duties: s 142.

6 *Ibid* s 38(4). A person is not to be treated under s 38(4) as a judge of the Court for the purposes of any statutory provision relating to (1) the appointment, retirement, removal or disqualification of judges of the Court, (2) the tenure of office and oaths to be taken by judges of the Court, or (3) the remuneration, allowances or pensions of judges of the Court: s 38(5). Subject to the Judicial Pensions and Retirement Act 1993 s 27 (see PARA 536), a person is not to be treated under the Constitutional Reform Act 2005 s 38(4) as having been a judge of the Court if he has acted in the Court only under s 38: s 38(6).

7 *Ibid* s 38(7).

2. Supplementary panel

There is to be a panel of persons known as the supplementary panel¹. On the commencement of these provisions² any member of the House of Lords who (1) meets one of the conditions below³, (2) does not hold high judicial office⁴, (3) has not attained the age of 75, and (4) is not a person who was appointed to the office of Lord Chancellor on or after 12 June 2003, becomes a member of the panel⁵. The conditions are (a) that he ceased to hold high judicial office less than five years before the commencement of these provisions; (b) that he was a member of the Judicial Committee of the Privy Council immediately before that commencement; (c) that he ceased to be a member of that Committee less than five years before that commencement⁶. A person becomes a member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court or as a senior territorial judge⁷, but only if, while he holds such office (i) his membership of the panel is approved in writing by the President of the Supreme Court, and (ii) the President of the Court gives the Lord Chancellor notice in writing of the approval⁸. A member of the supplementary panel may resign by notice in writing to the President of the Court⁹. Unless he resigns¹⁰ a person ceases to be a member of the supplementary panel (A) at the end of five years after the last day on which he holds his qualifying office¹¹, or (B) if earlier, at the end of the day on which he attains the age of 75¹².

1 Constitutional Reform Act 2005 s 39(1).

2 le on the commencement of *ibid* s 39. Section 39 comes into force on 1 October 2009: SI 2009/1604.

3 le one of the conditions in the Constitutional Reform Act 2005 s 39(3).

4 For the meaning of 'high judicial office' see PARA 521A.1.

5 Constitutional Reform Act 2005 s 39(2).

6 *Ibid* s 39(3).

7 In *ibid* s 39 'office as a senior territorial judge' has the same meaning as in s 38 (see PARA 521C.1): s 39(10) (a).

8 *Ibid* s 39(4). Section 39(4) does not apply to a person who ceases to hold office as a judge of the Supreme Court when he ceases to be President of the Court: s 39(5). Such a person becomes a member of the supplementary panel on ceasing to be President of the Court, unless (1) while President, he gives the Lord Chancellor notice that he is not to become a member of the panel, (2) he ceases to be President on being removed from office as a judge of the Court on the address of both Houses of Parliament, or (3) his office is declared vacant under s 36 (see PARA 521B.5): s 39(6). A person does not become a member of the supplementary panel under s 39(4) or (6) if (a) on ceasing to hold office as a judge of the Supreme Court he takes office as a senior territorial judge, or (b) on ceasing to hold office as a senior territorial judge he takes office as a judge of the Supreme Court: s 39(7).

9 *Ibid* s 39(8).

10 And subject to the Judicial Pensions and Retirement Act 1993 s 26(7)(b) and 27 (see PARAS 535, 536).

11 A person's 'qualifying office' is the office (that is, high judicial office, membership of the Judicial Committee of the Privy Council, office as a judge of the Supreme Court or office as a senior territorial judge) that he held before becoming a member of the supplementary panel: Constitutional Reform Act 2005 s 39(10) (b).

12 *Ibid* s 39(9).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

515-521 Judges of [Senior Courts]

As to appointment of judges of the Supreme Court see Constitutional Reform Act 2005 ss 25-31; and PARA 521A. As to terms of appointment see ss 32-37; and PARA 521B. As to acting judges see PARA 521C.

Neither the Secretary of State nor any of the designated judges (ie the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court) are liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under the Courts and Legal Services Act 1990 Pt 2 (ss 17-70) (see LEGAL PROFESSIONS): ss 69(1), 119(1) (s 69(1) amended by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23; definition of 'designated judges' in Courts and Legal Services Act 1990 s 119(1) amended by Constitutional Reform Act 2005 Sch 4 para 216).

For the purposes of the law of defamation, the publication by the Secretary of State or a designated judge of any advice or reasons given by or to him in the exercise of functions under the Courts and Legal Services Act 1990 Pt 2 is absolutely privileged: s 69(2) (amended for these purposes by SI 2003/1887; and prospectively repealed by Legal Services Act 2007 Sch 21 para 92, Sch 23).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/B. CIRCUIT JUDGES AND RECORDERS/522. Appointment of circuit judges.

B. CIRCUIT JUDGES AND RECORDERS

522. Appointment of circuit judges.

Her Majesty may from time to time appoint as circuit judges, to serve in the Crown Court¹ and county courts² and to carry out such other judicial functions as may be conferred on them under the Courts Act 1971 or any other enactment, such qualified persons as may be recommended to Her by the Lord Chancellor³. The maximum number of circuit judges is to be such as may be determined from time to time by the Lord Chancellor with the concurrence of the Treasury⁴.

No person is qualified to be appointed a circuit judge unless:

- 89 (1) he has a 10 year Crown Court or 10 year county court qualification⁵ within the meaning of the Courts and Legal Services Act 1990⁶;
- 90 (2) he is a recorder⁷; or
- 91 (3) he has held as a full-time appointment for at least three years one of certain specified⁸ offices⁹.

Persons who held certain existing judicial offices on 1 January 1972 became circuit judges by virtue of those offices¹⁰. Any person appointed after that day as the Recorder of London or the Common Serjeant becomes a circuit judge¹¹.

Circuit judges hold qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993¹². They are barred from legal practice¹³ and disqualified for membership of the House of Commons¹⁴. Circuit judges must take the oath of allegiance¹⁵ and the judicial oath¹⁶ before the Lord Chancellor¹⁷.

Circuit judges may be requested to act on a temporary basis in the High Court or the Criminal Division of the Court of Appeal to assist with the transaction of judicial business in the Supreme Court¹⁸. Particular provision is made in relation to circuit judges appointed as judges of the European Court of Human Rights or certain other international courts¹⁹.

1 As to the Crown Court see PARA 621 et seq post.

2 As to the county courts see PARA 701 et seq post.

3 Courts Act 1971 s 16(1). Before recommending any person to Her Majesty for appointment as a circuit judge, the Lord Chancellor must take steps to satisfy himself that that person's health is satisfactory: s 16(4). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Courts Act 1971 s 16(2). The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

As at 1 April 2001, there were 569 circuit judges: see the *Court Service Annual Report 2000-2001* p 10, published on 29 November 2001 as H of C Paper (2001-2001) no 356, and available at the date at which this title states the law at www.courtservice.gov.uk.

5 A person has a Crown Court qualification if he has a right of audience in relation to all proceedings in the Crown Court, and has a county court qualification if he has a right of audience in relation to all proceedings in county courts: Courts and Legal Services Act 1990 s 71(2)(d), (e). As to the construction of references to the period of years for which a person has held such a qualification see s 71(5), (6) (s 71(6) as added); and PARA 515 note 11 ante.

6 Courts Act 1971 s 16(3)(a) (s 16 amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 31(1)). Circuit judges were normally aged between 45 and 60 on appointment; however with effect from 30 April 2002 the Lord Chancellor has removed the lower age limits for most appointments in England and Wales for which he is responsible, in the hope that such appointments will be opened up to greater numbers of women and ethnic minority lawyers who are represented in greater numbers at the more junior end of the legal profession, and has abolished the current upper age limits for those wishing to apply for professional judicial office: see Lord Chancellor's Department Press Release 143/02, 26 April 2002. The statutory rights of audience requirement (see the text and note 5 supra) remains.

7 Courts Act 1971 s 16(3)(b) (as substituted: see note 6 supra). As to recorders see PARA 526 post.

8 The one of the offices listed in *ibid* s 16(3)(c) (as substituted: see note 6 supra), Sch 2 Pt IA (as added and amended). The specified offices are: (1) Social Security Commissioner (see SOCIAL SECURITY AND PENSIONS); (2) President of Social Security Appeal Tribunals and Medical Appeal Tribunals or chairman of such a tribunal (see SOCIAL SECURITY AND PENSIONS); (3) President of the Employment Tribunals (England and Wales) or member of a panel of chairmen established by regulations under the Employment Tribunals Act 1996 s 1(1) (as amended) for employment tribunals for England and Wales (see EMPLOYMENT vol 41 (2009) PARA 1363 et seq); (4) President or member of the Immigration Appeal Tribunal (see PARA 810 post; and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM); (5) member (excluding the President) of the Lands Tribunal (see PARA 812 post; and COMPULSORY ACQUISITION OF LAND vol 18 PARA 7220 et seq); (6) President of Pensions Appeal Tribunals (see PARA 815 post; and WAR AND ARMED CONFLICT); (7) President of VAT and Duties Tribunals or chairman of such a tribunal (see PARA 816 post; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 343 et seq); (8) Special Commissioner of the Inland Revenue (see PARA 817 post; and INCOME TAXATION); (9) coroner (see CORONERS); (10) master of the Queen's Bench Division (see PARA 654 post); (11) Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals (see PARAS 654, 657 post); (12) Admiralty Registrar (see PARA 660 post); (13) master of the Chancery Division (see PARA 655 post); (14) registrar in bankruptcy of the High Court (see PARA 666 post); (15) costs judge of the Supreme Court (referred to in the statute by the previous title of 'taxing master' (see PARA 656 post); (16) district judge of the Principal Registry of the Family Division (see PARA 658 post); (17) registrar of Civil Appeals (this office has now been abolished: see the Access to Justice Act 1999 s 70); (18) master of the Court of Protection (see PARA 668 post); (19) district judge (see PARA 661 post); and (20) district judge (magistrates' courts) (formerly known as 'stipendiary magistrate') (see MAGISTRATES): Courts Act 1971 Sch 2 Pt IA (added by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 31(2); amended by the Employment Rights (Dispute Resolution) Act 1998 s 15, Sch 1 para 1; and by the Access to Justice Act 1999 s 78(2), Sch 11 para 19).

9 Courts Act 1971 s 16(3)(c) (as substituted: see note 6 supra).

- 10 See *ibid* s 16(5), Sch 2 Pt I para 1. For supplementary and transitional provisions see Sch 2 Pt III (amended by the Statute Law (Repeals) Act 1973; and by the Judicial Pensions Act 1981 s 36, Sch 3 para 6(3), (4)).
- 11 Courts Act 1971 Sch 2 Pt I para 2.
- 12 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt I; and PARA 539 post.
- 13 See the Courts and Legal Services Act 1990 s 75, Sch 11.
- 14 See the House of Commons Disqualification Act 1975 s 1(1)(a), Sch 1 Pt I; and PARLIAMENT vol 78 (2010) PARA 908.
- 15 See the Promissory Oaths Act 1868 s 2; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.
- 16 See *ibid* s 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.
- 17 Courts Act 1971 s 22(1), (2). A person who became a circuit judge by virtue of holding certain offices on 1 January 1972 was not, however, required to take such oaths: see ss 16(5), 22(3), Sch 2 Pt I.
- 18 See the Supreme Court Act 1981 s 9 (as amended); and PARA 519 ante.
- 19 See PARA 521 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

522 Appointment of circuit judges

TEXT AND NOTE 3--Any recommendation for appointment to the office of circuit judge in exercise of the function under the 1971 Act s 16(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

The Lord Chancellor's function under the 1971 Act s 16(1) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 6--1971 Act s 16(3)(a) substituted: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 9(2).

NOTE 8--Now head (4) President or other member of the Asylum and Immigration Tribunal: 1990 Act Sch 11 (amended by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 6). 1999 Act s 70 repealed: Statute Law (Repeals) Act 2004.

Head (18). Reference to master of the Court of Protection repealed: Mental Capacity Act 2005 Sch 6 para 17, Sch 7.

NOTE 10--1971 Act Sch 2 para 1 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 17--Courts Act 1971 s 22 amended: Constitutional Reform Act 2005 Sch 4 para 70.

NOTE 17--1971 Act Sch 2 Pt I amended: Statute Law (Repeals) Act 2004.

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523. Tenure of office of circuit judges.

Subject to the Lord Chancellor's¹ power to authorise a circuit judge² to continue in office up to the age of 75 years³, a circuit judge must vacate his office on the day on which he attains the age of 70 years⁴.

The Lord Chancellor may, if he thinks fit, remove a circuit judge from office on the ground of incapacity⁵ or misbehaviour⁶.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the appointment of circuit judges see PARA 522 ante.

3 In subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6): see PARA 535 post.

4 Courts Act 1971 s 17(1) (amended by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 8).

5 A person must be in good health on recommendation for appointment as a circuit judge: see PARA 522 note 3 ante.

6 Courts Act 1971 s 17(4).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

523 Tenure of office of circuit judges

TEXT AND NOTE 6--The Lord Chief Justice must agree to removal: Courts Act 1971 s 17(4) (amended by Constitutional Reform Act 2005 Sch 4 para 68).

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524. Salaries etc of circuit judges.

There must be paid to each circuit judge¹ such salary as may be determined by the Lord Chancellor² with the consent of the Treasury³. Every salary so payable must be charged on and paid out of the Consolidated Fund⁴. A circuit judge's salary begins from the date of his appointment and accrues due from day to day and is payable at such intervals, not exceeding three months, as the Treasury may determine⁵. Such salary may be increased, but not reduced, by a further determination under these provisions⁶.

There must also be paid to circuit judges out of money provided by Parliament such allowances as the Lord Chancellor may, with the approval of the Treasury, determine⁷.

1 As to the appointment of circuit judges see PARA 522 ante.

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Courts Act 1971 s 18(1). The statutory wording is 'with the consent of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the consent of the Treasury.

The Courts Act 1971 s 18(1) is subject to s 16(5), Sch 2 Pt II, which contains transitional and supplementary provisions relating to certain office holders.

4 Ibid s 18(2)(a). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

5 Ibid s 18(2)(b), (c).

6 Ibid s 18(2)(d). Salaries are currently set following a recommendation by the non-statutory Senior Salaries Review Body and are normally increased as from 1 April each year. As to salaries payable for 2002-2003 and 2003-2004 see the *Times* (1 March 2002) p 12.

7 Courts Act 1971 s 18(5). The statutory wording is 'with the approval of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the approval of the Treasury.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

524 Salaries etc of circuit judges

TEXT AND NOTES--The Lord Chancellor's functions under the 1971 Act s 18 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/B. CIRCUIT JUDGES AND RECORDERS/525. Appointment of deputy circuit judges to facilitate the disposal of court business.

525. Appointment of deputy circuit judges to facilitate the disposal of court business.

If it appears to the Lord Chancellor¹ that it is expedient as a temporary measure to make an appointment under these provisions in order to facilitate the disposal of business in the Crown Court² or a county court³, or Technology and Construction Court ('TCC') business⁴ in the High Court, he may appoint to be a deputy circuit judge, during such period or on such occasions as he thinks fit, any person who has held office as a judge of the Court of Appeal⁵ or of the High

Court⁶ or as a circuit judge⁷. No such appointment of a person may be such as to extend beyond the day on which he attains the age of 75 years⁸.

During the period or on the occasions for which a deputy circuit judge is so appointed he is to be treated for all purposes as, and accordingly may perform any of the functions of, a circuit judge⁹; except that he is not to be treated as a circuit judge for the purpose of any provision made by or under any enactment and relating to the appointment, retirement, removal or disqualification of circuit judges, the tenure of office and oaths to be taken by such judges, or the remuneration, allowances or pensions of such judges¹⁰.

There must be paid out of money provided by Parliament to deputy circuit judges appointed under these provisions such remuneration and allowances as the Lord Chancellor may, with the approval of the Treasury¹¹, determine¹².

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the Crown Court see PARA 621 et seq post.

3 As to county courts see PARA 701 et seq post.

4 As to the TCC see PARA 616 post. TCC business was previously known as 'official referees' business', which is the terminology used in the statute.

5 As to the judges of the Court of Appeal see PARA 515 ante, para 637 post.

6 As to the judges of the High Court see PARA 515 ante, paras 602, 619 post.

7 Courts Act 1971 s 24(1)(a) (s 24 substituted by the Supreme Court Act 1981 s 146). As to the appointment of circuit judges see PARA 522 ante.

8 Courts Act 1971 s 24(1A)(a) (added by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 9(2)).

9 Courts Act 1971 s 24(2) (as substituted: see note 7 supra).

10 Ibid s 24(3) (as substituted: see note 7 supra).

11 The statutory wording is 'with the approval of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the approval of the Treasury.

12 Courts Act 1971 s 24(5) (as substituted: see note 7 supra).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

525 Appointment of deputy circuit judges to facilitate the disposal of court business

TEXT AND NOTES--The Lord Chancellor's functions under the 1971 Act s 24 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 7--Courts Act 1971 s 24(1) amended, s 24(6) added: Constitutional Reform Act 2005 Sch 4 para 71, Sch 18 Pt 2.

1971 Act s 24(1)(a) substituted: Tribunals, Courts and Enforcement Act 2007 s 55.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/B. CIRCUIT JUDGES AND RECORDERS/526. Appointment of recorders.

526. Appointment of recorders.

Her Majesty may from time to time appoint qualified persons, to be known as recorders, to act as part-time judges of the Crown Court¹ and to carry out such other judicial functions as may be conferred on them under the Courts Act 1971 or any other enactment². Every such appointment must be of a person recommended to Her Majesty by the Lord Chancellor³ and no person is qualified to be appointed a recorder unless he has a 10 year Crown Court or 10 year county court qualification⁴ within the meaning of the Courts and Legal Services Act 1990⁵.

If it appears to the Lord Chancellor that it is expedient as a temporary measure to make an appointment in order to facilitate the disposal of business in the Crown Court or a county court⁶, or Technology and Construction Court ('TCC')⁷ business in the High Court, he has statutory power to make additional appointments of persons so qualified as recorders⁸. On the occasions for which such a person is appointed he is to be treated for all purposes as, and may perform any of the functions of, a recorder⁹. The Courts Act 1971 refers to such persons as 'assistant recorders'¹⁰. On 12 April 2000, however, the Lord Chancellor decided that the distinction between these two classes of recorders no longer served a useful purpose. All assistant recorders were appointed as recorders and all new appointments are now to be made to recorder through open competition¹¹.

Recorders must take the oath of allegiance¹² and the judicial oath¹³ before a judge of the Court of Appeal¹⁴ or of the High Court¹⁵ or before a circuit judge¹⁶.

A recorder may be requested to act on a temporary basis in the High Court to assist with the transaction of judicial business in the Supreme Court¹⁷.

1 As to the Crown Court see PARA 621 et seq post.

2 Courts Act 1971 s 21(1).

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 As to when a person holds such a qualification see PARA 522 note 5 ante.

5 Courts Act 1971 s 21(2) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 32(1)). Recorders were normally aged between 35 and 53 on appointment; however with effect from 30 April 2002 the Lord Chancellor has removed the lower age limits for most appointments in England and Wales for which he is responsible, in the hope that such appointments will be opened up to greater numbers of women and ethnic minority lawyers who are represented in greater numbers at the more junior end of the legal profession, and has abolished the current upper age limits for those wishing to apply for professional judicial office: see Lord Chancellor's Department Press Release 143/02, 26 April 2002. The statutory rights of audience requirement (see the text and note 4 supra) remains.

6 As to county courts see PARA 701 et seq post.

7 As to the TCC see PARA 616 post. TCC business was previously known as 'official referees' business', which is the terminology used in the statute.

8 Courts Act 1971 s 24(1) (substituted by the Supreme Court Act 1981 s 146; amended by the Courts and Legal Services Act 1990 Sch 10 para 32(2)).

9 Courts Act 1971 s 24(2) (as substituted: see note 8 supra).

10 See *ibid* s 24 (as substituted and amended).

11 See the *Court Service Annual Report 2000-2001* (published on 29 November 2001 as H of C Paper (2000-2001) 356) at p 10, footnote 1. At the date at which this title states the law the report was available at www.courtservice.gov.uk.

12 See the Promissory Oaths Act 1868 s 2; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

13 See *ibid* s 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

14 As to the judges of the Court of Appeal see PARA 515 ante, para 637 post.

15 As to High Court judges see PARA 515 ante, paras 602, 619 post.

16 Courts Act 1971 s 22(1), (2). As to circuit judges see PARA 522 ante.

17 See the Supreme Court Act 1981 s 9 (as amended); and PARA 519 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head

and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

526 Appointment of recorders

TEXT AND NOTE 2--Any recommendation for appointment to the office of recorder in exercise of the function under the Courts Act 1971 s 21(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

TEXT AND NOTES 5, 8--The Lord Chancellor's functions under the 1971 Act s 21(2), 24 are protected functions for the purposes of the 2005 Act s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 5--1971 Act s 21(2) further amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 9(3).

TEXT AND NOTE 8--1971 Act s 24(1) amended, s 24(6) added: 2005 Act Sch 4 para 71, Sch 18 Pt 2.

1971 Act s 24(1) further amended: Tribunals, Courts and Enforcement Act 2007 s 55, Sch 10 para 9(4).

Any appointment to the office of assistant recorder in exercise of the function under the 1971 Act s 24(1) must be made, by virtue of the 2005 Act s 85, Sch 14 Pt 2, in accordance with ss 85-93, 96.

TEXT AND NOTE 16--1971 Act s 22 amended: 2005 Act Sch 4 para 70.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/B. CIRCUIT JUDGES AND RECORDERS/527. Tenure of office of recorders.

527. Tenure of office of recorders.

The appointment of a person as a recorder¹ must specify the term for which he is appointed and the frequency and duration of the occasions during that term on which he will be required to be available to undertake the duties of a recorder². The Lord Chancellor³ may, with the agreement of the recorder concerned, from time to time extend for such period as he thinks appropriate the term for which a recorder is appointed⁴. Neither the initial term for which a recorder is appointed nor any such extension of that term must be such as to continue his appointment as a recorder after the day on which he attains the age of 70 years⁵ but this is subject to the Lord Chancellor's statutory power⁶ to authorise his continuance in office up to the age of 75 years⁷.

The Lord Chancellor may if he thinks fit terminate the appointment of a recorder on the ground of incapacity or misbehaviour or of a failure to comply with any requirement specified as mentioned above in the terms of his appointment⁸.

¹ As to the appointment of recorders see PARA 526 ante.

2 Courts Act 1971 s 21(3). As to the statutory power to appoint assistant recorders, which is no longer exercised in practice, see s 24 (as substituted and amended); and PARA 526 ante.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Courts Act 1971 s 21(4).

5 Ibid s 21(5) (amended by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 9(1)).

6 le under the Judicial Pensions and Retirement Act 1993 s 26(4)-(6): see PARA 535 post.

7 Courts Act 1971 s 21(5) (as amended: see note 5 supra).

8 Ibid s 21(6).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

527 Tenure of office of recorders

TEXT AND NOTES 2, 4, 8--Courts Act 1971 s 21(3), (4), (6) substituted: Constitutional Reform Act 2005 Sch 4 para 69.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/B. CIRCUIT JUDGES AND RECORDERS/528. Salaries etc of recorders.

528. Salaries etc of recorders.

There must be paid to recorders¹ out of money provided by Parliament such remuneration and allowances as the Lord Chancellor² may, with the approval of the Treasury³, determine⁴.

1 As to the appointment of recorders see PARA 526 ante.

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 The statutory wording is 'with the approval of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the approval of the Treasury.

4 Courts Act 1971 s 21(7). Similar provision is made in relation to salaries and allowances for 'assistant recorders' appointed under s 24 (as substituted and amended): see s 24(5) (as substituted). However, such appointments are no longer made: see PARA 526 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/529. District judges, masters and registrars in the High Court.

C. DISTRICT JUDGES, MASTERS AND REGISTRARS

529. District judges, masters and registrars in the High Court.

Although exercising judicial functions¹ and being obliged on appointment to swear the oath of allegiance and the judicial oath², the masters and registrars in the Royal Courts of Justice and the district judges who perform equivalent functions in the Principal Registry of the Family

Division³ and in the district registries⁴ have traditionally been described as court officers rather than as members of the judiciary⁵. The title of the relevant practice direction concerned with allocating levels of cases to levels of the judiciary indicates that it may now be more appropriate to describe the holders of such offices as junior members of the judiciary⁶. Since their duties are performed in relation to particular offices of the High Court, their appointment, qualifications and tenure of office are more conveniently discussed in a later section of this title⁷.

Many of such offices are qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993 and the pension provision made in respect of them is discussed below together with the pension provision made in respect of the higher judiciary⁸.

District judges, masters and registrars of the Supreme Court were normally aged between 40 and 60 on appointment; however with effect from 30 April 2002 the Lord Chancellor has removed the lower age limits for most appointments in England and Wales for which he is responsible, in the hope that such appointments will be opened up to greater numbers of women and ethnic minority lawyers who are represented in greater numbers at the more junior end of the legal profession. He has also abolished the current upper age limits for those wishing to apply for professional judicial office⁹.

1 As to the allocation of business between judges, masters and district judges in the High Court see CIVIL PROCEDURE vol 11 (2009) PARA 50.

2 See the Courts and Legal Services Act 1990 s 76; and PARA 652 post.

3 As to the Principal Registry of the Family Division see PARA 644 post.

4 As to district registries see PARA 646 post.

5 See the Supreme Court Act 1981 Pt IV (ss 88-104) (as amended) which is headed 'Officers and Offices' and which contains the provisions relating to the appointment of masters, registrars and district judges in the High Court.

6 See *Practice Direction--Allocation of Cases to Levels of the Judiciary* PD 2B; and CIVIL PROCEDURE vol 11 (2009) PARA 50.

7 See PARA 647 et seq post.

8 See PARA 537 et seq post.

9 See Lord Chancellor's Department Press Release 143/02, 26 April 2002. The statutory rights of audience requirements for particular appointments (see PARA 647 et seq post) remains. Retirement ages are not affected.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/530. District judges and deputy district judges in county courts.

530. District judges and deputy district judges in county courts.

No person may be appointed a district judge or deputy district judge under the County Courts Act 1984 unless he has a seven year general qualification¹ within the meaning of the Courts and Legal Services Act 1990². Such appointments are made by the Lord Chancellor³ in relation to particular county court districts and are more conveniently discussed in a later section of this title⁴.

A district judge holds office during good behaviour⁵. He must vacate his office on the day on which he attains the age of 70 years⁶ but this is subject to the Lord Chancellor's statutory power⁷ to authorise his continuance in office up to the age of 75 years⁸.

The power to remove a district judge from his office on account of misbehaviour is exercisable by the Lord Chancellor⁹, who may also remove him from his office on account of inability to perform his duties¹⁰.

District judges in the district registries of the High Court are appointed from among the county court district judges¹¹.

District judges hold a qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993¹². They must take the oath of allegiance¹³ and the judicial oath¹⁴ before a judge of the High Court¹⁵ or a circuit judge¹⁶ and are disqualified from legal practice¹⁷ and for membership of the House of Commons¹⁸.

District judges have traditionally been described as court officers rather than as members of the judiciary¹⁹; but the title of the relevant practice direction concerned with allocating levels of cases to levels of the judiciary indicates that it may now be more appropriate to describe the holders of such offices as junior members of the judiciary²⁰.

1 A person has a 'general qualification' if he has a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates' courts: Courts and Legal Services Act 1990 s 71(3)(c). As to the construction of references to the length of time for which a person has held such a qualification see PARA 515 note 11 ante.

2 County Courts Act 1984 s 9 (amended by the Courts and Legal Services Act 1990 s 71(2), 125(3), Sch 10 para 57, Sch 18 para 42). District judges were normally aged between 40 and 60, and deputy district judges between 35 and 60, on appointment; however with effect from 30 April 2002 the Lord Chancellor has removed the lower age limits for most appointments in England and Wales for which he is responsible, in the hope that such appointments will be opened up to greater numbers of women and ethnic minority lawyers who are represented in greater numbers at the more junior end of the legal profession, and has abolished the current upper age limits for those wishing to apply for professional judicial office: see Lord Chancellor's Department

Press Release 143/02, 26 April 2002. The statutory rights of audience requirement (see the text and note 1 *supra*) remains.

3 As to the Lord Chancellor see PARA 501 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq.*

4 See the County Courts Act 1984 ss 6, 8 (as amended); and PARA 728 *post*.

5 *Ibid* s 11(1), (4) (s 11(1), (2) substituted by the Judicial Pensions and Retirement Act 1993 s 26(1), Sch 6 para 17).

6 County Courts Act 1984 s 11(2) (as substituted: see note 5 *supra*).

7 *Ie* under the Judicial Pensions and Retirement Act 1993 s 26(2)-(4): see PARA 535 *post*.

8 See note 6 *supra*.

9 County Courts Act 1984 s 11(5).

10 *Ibid* s 11(6).

11 See the Supreme Court Act 1981 s 100 (as amended); and PARA 661 *post*.

12 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 *post*.

13 See the Promissory Oaths Act 1868 s 2; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

14 See *ibid* s 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

15 As to High Court judges see PARA 515 *ante*, paras 602, 619 *post*.

16 Courts and Legal Services Act 1990 s 76. As to circuit judges see PARA 522 *ante*.

17 See *ibid* s 75, Sch 11.

18 See the House of Commons Disqualification Act 1975 s 1(1)(a), Sch 1 Pt I; and PARLIAMENT vol 78 (2010) PARA 908.

19 See eg the County Courts Act 1984 s 147(1) ('officer', in relation to a court, means any registrar, deputy registrar or assistant registrar of that court [now known as district judge or deputy district judge: see the Courts and Legal Services Act 1990 s 74(1)] and any clerk, bailiff, usher or messenger in the service of that court').

20 See *Practice Direction--Allocation of Cases to Levels of the Judiciary* PD 2B; and CIVIL PROCEDURE vol 11 (2009) PARA 62.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head

and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

530 District judges and deputy district judges in county courts

TEXT AND NOTE 2--County Courts Act 1984 s 9 further amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 15, Sch 11 para 8.

TEXT AND NOTES 5-10--1984 Act s 11 further amended: Constitutional Reform Act 2005 Sch 4 para 164.

NOTE 19--Definition of 'officer' in 1984 Act s 147(1) amended: 2007 Act Sch 11 para 9.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/530A. Head and Deputy Head of Civil Justice.

530A. Head and Deputy Head of Civil Justice.

There is to be a Head of Civil Justice¹. The Head of Civil Justice is (1) the Master of the Rolls, or (2) if the Lord Chief Justice appoints another person, that person². The Lord Chief Justice may appoint a person to be Deputy Head of Civil Justice³. The Lord Chief Justice must not appoint a person⁴ unless these conditions are met (a) the Lord Chief Justice has consulted the Lord Chancellor; (b) the person to be appointed is one of the following (i) the Chancellor of the High Court; (ii) an ordinary judge of the Court of Appeal⁵. A person appointed⁶ holds the office to which he is appointed in accordance with the terms of his appointment⁷.

1 Courts Act 2003 s 62(1) (substituted by Constitutional Reform Act 2005 Sch 4 para 330).

2 2003 Act s 62(2) (as substituted: see NOTE 1).

3 Ibid s 62(3) (as substituted: see NOTE 1).

4 Under head (2) in the text or ibid s 62(3).

5 Ibid s 62(4) (as substituted: see NOTE 1).

6 Under head (2) in the text or ibid s 62(3).

7 Ibid s 62(5) (as substituted: see NOTE 1).

The Lord Chief Justice may nominate a judicial office holder (as defined in 2005 Act s 109(4)) to exercise his functions under the 2003 Act s 62: s 62(6) (as substituted).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/530B. Power to alter judicial titles.

530B. Power to alter judicial titles.

The Lord Chancellor may by order (1) alter the name of an office listed below¹; (2) provide for or alter the way in which the holders of any of those offices are to be styled². The offices are Admiralty Registrar, Assistant Recorder, Circuit judge, Deputy Circuit judge, Deputy district judge³, Deputy district judge⁴, Deputy Head of Civil Justice, Deputy Head of Family Justice, Deputy judge of the High Court, District judge for a county court district, District judge of the High Court, District judge of the principal registry of the Family Division, District probate registrar, Head of Civil Justice, Head of Family Justice, Lord Chief Justice, Master of the Chancery Division, Master of the Queen's Bench Division, Master of the Rolls, Ordinary judge of the Court of Appeal, President of the Court of Protection, President of the Courts of England and Wales, President of the Family Division, President of the Queen's Bench Division, Presiding Judge for a Circuit, Puisne judge of the High Court, Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals, Recorder, Registrar in Bankruptcy of the High Court, Senior Judge of the Court of Protection, Senior Presiding Judge for England and Wales, Taxing Master of the Senior Courts, Chancellor of the High Court, Vice-president of the Court of Appeal, Vice-president of the Court of Protection, Vice-president of the Queen's Bench Division⁵. Before making an order under the above provisions the Lord Chancellor must consult (a) the Master of the Rolls, (b) the President of the Queen's Bench Division, (c) the President of the Family Division, and (d) the Chancellor of the High Court⁶.

1 le listed in the Courts Act 2003 s 64(2).

2 Ibid s 64(1). The Lord Chancellor may also by order provide for or alter the way in which deputies or temporary additional officers appointed under the Senior Courts Act 1981 s 91(1)(a) (see PARA 649) are to be styled: Courts Act 2003 s 64(3). The Lord Chancellor may make an order under s 64 only with the concurrence of the Lord Chief Justice: s 64(3A) (added by Constitutional Reform Act 2005 Sch 4 para 331(3)). An order under the 2003 Act s 64 may make such provision as the Lord Chancellor considers necessary in consequence of any provision made under s 64(1) or (3): s 64(5). The provision that may be made under s 64(5) includes provision amending, repealing or revoking any enactment: s 64(6). The Lord Chief Justice may nominate a judicial office

holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 64: s 64(7) (added by 2005 Act Sch 4 para 331(5)). In the Courts Act 2003 'enactment' includes subordinate legislation and, except where otherwise provided, any reference to an enactment is to an enactment whenever passed or made; and 'subordinate legislation' here has the same meaning as in the Interpretation Act 1978: Courts Act 2003 s 107(8). As to the power of the Lord Chancellor or Lord Chief Justice to make orders under the Courts Act 2003 generally see s 108 (amended by Constitutional Reform Act 2005 Sch 4 para 348).

3 Appointed under the Senior Courts Act 1981 s 102 (see PARA 662).

4 Appointed under the County Courts Act 1984 s 8 (see PARA 728).

5 Courts Act 2003 s 64(2) (amended by the Constitutional Reform Act 2005 Sch 4 para 331(2), Sch 11 para 4; the Mental Capacity Act 2005 Sch 6 para 47(3), Sch 7; the Tribunals, Courts and Enforcement Act 2007 Sch 11 para 14; and SI 2005/2506).

6 2003 Act s 64(4) (amended by the Constitutional Reform Act 2005 Sch 4 para 331(4), Sch 18 Pt 2; and SI 2005/2506).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/530C. Head and Deputy Head of Criminal Justice

530C. Head and Deputy Head of Criminal Justice

There is to be a Head of Criminal Justice¹. The Head of Criminal Justice is (1) the Lord Chief Justice, or (2) if the Lord Chief Justice appoints another person, that person². The Lord Chief Justice may appoint a person to be Deputy Head of Criminal Justice³. The Lord Chief Justice must not appoint a person⁴ unless these conditions are met (a) the Lord Chief Justice has consulted the Lord Chancellor; (b) the person to be appointed is a judge of the Court of Appeal⁵.

A person appointed⁶ holds the office to which he is appointed in accordance with the terms of his appointment⁷.

- 1 Constitutional Reform Act 2005 s 8(1).
- 2 Ibid s 8(2).
- 3 Ibid s 8(3).
- 4 Ie under ibid s 8(2)(b) (head (2) in the TEXT) or 8(3).
- 5 Ibid s 8(4) (amended by the Police and Justice Act 2006 Sch 14 para 61).
- 6 Ie under the 2005 Act s 8(2)(b) (head (2) in the TEXT) or 8(3).
- 7 Ibid s 8(5).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/530D. Head and Deputy Head of Family Justice

530D. Head and Deputy Head of Family Justice

1. In general

The President of the Family Division is Head of Family Justice¹. The Lord Chief Justice may appoint a person to be Deputy Head of Family Justice². The Lord Chief Justice must not appoint such a person³ unless these conditions are met (1) the Lord Chief Justice has consulted the Lord

Chancellor; (2) the person to be appointed is an ordinary judge of the Court of Appeal⁴. A person appointed as Deputy Head of Family Justice holds that office in accordance with the terms of his appointment⁵.

1 Constitutional Reform Act 2005 s 9(1).

2 Ibid s 9(2).

3 Ibid s 9(2).

4 Ibid s 9(3).

5 Ibid s 9(4).

2. Appointment

No person is qualified to be appointed Head of Family Justice unless he is qualified for appointment as a Lord Justice of Appeal or is a judge of the Court of Appeal¹. As soon as may be after his acceptance of office, the Head of Family Justice must take the oath of allegiance² and the judicial oath in the presence of the Lord Chancellor³.

When so appointed, the Head of Family Justice is a judge of the High Court⁴ and of the Family Division of that Court⁵ and an ex officio judge of the Court of Appeal⁶. A clerk and a secretary must be attached to the Head of Family Justice⁷.

Whenever the office of Head of Family Justice is vacant, Her Majesty may by letters patent appoint a qualified person to that office⁸.

The Head of Family Justice must vacate office on the day on which he attains the age of 70 years unless he has ceased to hold office before then⁹; and he holds office during good behaviour, subject to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament¹⁰. On becoming Lord Chancellor or a Lord of Appeal in Ordinary, the Head of Family Justice must vacate office¹¹.

The Head of Family Justice may at any time resign it by giving the Lord Chancellor notice in writing to that effect¹². If satisfied by means of a medical certificate that the Head of Family Justice is disabled by permanent infirmity from the performance of the duties of his office and is for the time being incapacitated from resigning his office, the Lord Chancellor may by instrument under his hand declare¹³ the Head of Family Justice's office to have been vacated; and the instrument has the like effect for all purposes as if that person had on the date of the instrument resigned his office¹⁴.

There must be paid to the Head of Family Justice such salary as may be determined by the Lord Chancellor with the concurrence of the Minister for the Civil Service¹⁵; and such salary may be increased, but not reduced, by such a determination or further determination¹⁶.

1 Senior Courts Act 1981 s 10(3)(a) (s 10 amended by Constitutional Reform Act 2005 Sch 4 paras 122-124, Sch 11 para 1, Sch 18 Pt 2). As to the appointment of Lords Justice of Appeal see PARA 515. For the purposes of the Family Proceedings Rules 1991, SI 1991/1247 (as amended), unless the context otherwise requires, 'the Head' means the Head of Family Justice or, in the case of his absence or incapacity through illness or otherwise or of a vacancy in the office of Head, the senior puisne judge of that Division: r 1.2(1). For provision relating to the selection of the Head, see Constitutional Reform Act 2005 ss 67-75.

2 Ibid as set out in the Promissory Oaths Act 1868: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 923, 924.

3 Senior Courts Act 1981 s 10(4), see NOTE 1.

- 4 See the Senior Courts Act 1981 s 4(1)(c); and PARA 602.
- 5 See *ibid* s 5(1)(c); and PARA 603A.
- 6 See *ibid* s 2(2)(f); and PARA 637.
- 7 See *ibid* s 98(1); and PARAS 671-700.
- 8 *Ibid* s 10(1), see NOTE 1. As to the precedence of the Head of Family Justice see s 13; and PARA 517.
- 9 *Ibid* s 11(1), (2) (s 11(1), (9) amended by Constitutional Reform Act 2005 Sch 4 para 123, Sch 18 Pt 2; 1981 Act s 11(2) amended by Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 4; 1981 Act s 11(4) amended by 2005 Act Sch 17 para 22(4) (in force on 1 October 2009: SI 2009/1604)). The Lord Chancellor's functions under the 1981 Act s 11(7), (8) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.
- 10 Senior Courts Act 1981 s 11(1), (3), and see NOTE 9.
- 11 *Ibid* s 11(4), and see NOTE 9.
- 12 *Ibid* s 11(7).
- 13 Such a declaration is of no effect unless it is made with the concurrence of two of the Lord Chief Justice, the Master of the Rolls and the Vice-Chancellor: *ibid* s 11(9).
- 14 *Ibid* s 11(8).
- 15 *Ibid* s 12(1) (amended by Constitutional Reform Act 2005 Sch 4 para 124, Sch 18 Pt 2).
- 16 1981 Act s 12(3). There must be paid to the Head of Family Justice, in addition to his salary, such allowances as may be determined by the Lord Chancellor with the concurrence of the Minister for the Civil Service: s 12(6).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/530E. Senior President of Tribunals.

530E. Senior President of Tribunals.

Her Majesty may, on the recommendation of the Lord Chancellor, appoint a person to the office of Senior President of Tribunals¹. A holder of the office of Senior President of Tribunals must, in carrying out the functions of that office, have regard to (1) the need for tribunals² to be accessible, (2) the need for proceedings before tribunals (a) to be fair, and (b) to be handled quickly and efficiently, (3) the need for members of tribunals to be experts in the subject-matter of, or the law to be applied in, cases in which they decide matters, and (4) the need to develop innovative methods of resolving disputes that are of a type that may be brought before tribunals³.

1 Tribunals, Courts and Enforcement Act 2007 s 2(1). For further provision about the Senior President of Tribunals and about recommendations for appointment under s 2(1) see s 2(2), Sch 1 (Sch 1 partly in force: see SI 2007/2709).

2 In the 2007 Act s 2(3) 'tribunals' means (1) the First-tier Tribunal, (2) the Upper Tribunal, (3) employment tribunals, (4) the Employment Appeal Tribunal, and (5) the Asylum and Immigration Tribunal: s 2(4).

3 Ibid s 2(3).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(i) Judicial

Appointments and Salaries/C. DISTRICT JUDGES, MASTERS AND REGISTRARS/530F. Judicial-appointment eligibility condition.

530F. Judicial-appointment eligibility condition.

1. General

The following provision¹ applies for the purposes of any statutory provision² that (1) relates to an office or other position, and (2) refers to a person who satisfies the judicial-appointment eligibility condition on an N-year basis (where N is the number stated in the provision)³. A person satisfies that condition on an N-year basis if (a) the person has a relevant qualification⁴, and (b) the total length of the person's qualifying periods⁵ is at least N years⁶.

1 Ie the Tribunals, Courts and Enforcement Act 2007 s 50(2).

2 In ibid s 50 'statutory provision' means (1) a provision of an Act, or (2) a provision of subordinate legislation (within the meaning given by the Interpretation Act 1978 s 21(1)): 2007 Act s 50(5).

3 Ibid s 50(1).

4 A person has a relevant qualification if the person (1) is a solicitor or a barrister (but see s 51 and PARA 530F.2), or (2) holds a qualification that under s 51(1) is a relevant qualification in relation to the office, or other position, concerned: s 50(4). In s 50 'barrister' means barrister in England and Wales; 'solicitor' means solicitor of the Senior Courts of England and Wales: s 50(5). See further PARA 530F.2. At any time before the coming into force of the Constitutional Reform Act 2005 s 59(1) (renaming of Supreme Court) (ie 1 October 2009: SI 2009/1604), the reference to the Senior Courts in the 2007 Act s 50(5) is to be read as a reference to the Supreme Court: s 50(7).

5 In ibid s 50(2) 'qualifying period', in relation to a person, means a period during which the person (1) has a relevant qualification, and (2) gains experience in law (see s 52 and PARA 530F.3): s 50(3).

6 Ibid s 50(2).

Schedule 10 (amended by SI 2008/2833, SI 2009/1307, SI 2009/1834, SI 2009/1835), which makes amendments for the purpose of substituting references to satisfying the judicial-appointment eligibility condition in place of references to having a qualification mentioned in the Courts and Legal Services Act 1990 s 71, for the purpose of reducing qualifying periods for eligibility for appointment to certain judicial offices from ten and seven years to seven and five years respectively, and for connected purposes, has effect: 2007 Act s 50(6).

2. 'Relevant qualification': further provision

The Lord Chancellor may by order provide for a qualification specified in the order to be a relevant qualification¹ in relation to an office or other position specified in the order². A qualification may be so specified only if it is one awarded by a body which is an approved regulator³ in relation to the exercise of a right of audience or the conduct of litigation⁴. Such an order may, in relation to a qualification specified in the order, include provision as to when a person who holds the qualification is to be taken⁵ first to have held it⁶.

Before making an order under the provisions above, the Lord Chancellor must consult the Lord Chief Justice of England and Wales⁷, and the Judicial Appointments Commission⁸. Power to make an order under the above provisions is exercisable by statutory instrument⁹. An order may make different provision for different purpose¹⁰. No order may be made unless a draft of the statutory instrument containing it (whether alone or with other provision) has been laid before, and approved by a resolution of, each House of Parliament¹¹.

1 Ie for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 50(2) and (3): see PARA 530F.1.

2 Tribunals, Courts and Enforcement Act 2007 s 51(1).

3 le for the purposes of the Legal Services Act 2007.

4 Tribunals, Courts and Enforcement Act 2007 s 51(2) (amended by Legal Services Act 2007 Sch 21 para 162(2)). The reference is to a right of audience or the conduct of litigation within the meaning of the Legal Services Act 2007: see LEGAL PROFESSIONS vol 65 (2008) PARA 512.

Where (1) a qualification is so specified, (2) it is one awarded by a body such as is mentioned in the Tribunals, Courts and Enforcement Act 2007 s 51(2), and (3) after the qualification is so specified, it becomes the case that the body is not an approved regulator in relation to the exercise of a right of audience, and is not an approved regulator in relation to the conduct of litigation, the provision specifying the qualification ceases to have effect, subject to any provision made under the Legal Services Act 2007 s 46 (see LEGAL PROFESSIONS vol 65 (2008) PARA 409): Tribunals, Courts and Enforcement Act 2007 s 51(4) (amended by Legal Services Act 2007 Sch 21 para 162(3)).

For the purposes of the Tribunals, Courts and Enforcement Act 2007 ss 50, 51 (1) a person is to be taken first to become a solicitor when the person's name is entered on the roll kept under the Solicitors Act 1974 s 6 (see LEGAL PROFESSIONS vol 65 (2008) PARA 662) for the first time after the person's admission as a solicitor (Tribunals, Courts and Enforcement Act 2007 s 51(5)); (2) a person is to be taken first to become a barrister when the person completes pupillage in connection with becoming a barrister, or in the case of a person not required to undertake pupillage in connection with becoming a barrister, when the person is called to the Bar of England and Wales (Tribunals, Courts and Enforcement Act 2007 s 51(6)). For the purposes of s 50, a barrister, a solicitor, or a person who holds a qualification specified under s 51(1), is to be taken not to have a relevant qualification at times when, as a result of disciplinary proceedings, he is prevented from practising as a barrister or (as the case may be) as a solicitor or as a holder of the specified qualification: s 51(7). The Lord Chancellor may by order make provision supplementing or amending s 51(5)-(7): s 51(8). 'Barrister' means barrister in England and Wales; and 'solicitor' means solicitor of the Senior Courts of England and Wales: s 51(11).

5 le for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 50: see PARA 530F.1.

6 Tribunals, Courts and Enforcement Act 2007 s 51(3).

7 The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) (see PARA 516A.1) to exercise this function: Tribunals, Courts and Enforcement Act 2007 s 51(10).

8 Tribunals, Courts and Enforcement Act 2007 s 51(9).

9 Tribunals, Courts and Enforcement Act 2007 s 51(12).

10 Tribunals, Courts and Enforcement Act 2007 s 51(13).

11 Tribunals, Courts and Enforcement Act 2007 s 51(14).

See also Constitutional Reform Act 2005 s 19, Sch 7 para 4 (amended by Tribunals, Courts and Enforcement Act 2007 s 144(11)) (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

3. Meaning of 'gain experience in law'

For the purposes of provision relating to the judicial-appointment eligibility condition¹, a person gains experience in law during a period if the period is one during which the person is engaged in law-related activities². For the purposes of these provisions³, each of the following is a 'law-related activity' (1) the carrying-out of judicial functions of any court or tribunal; (2) acting as an arbitrator; (3) practice or employment as a lawyer; (4) advising (whether or not in the course of practice or employment as a lawyer) on the application of the law; (5) assisting (whether or not in the course of such practice) persons involved in proceedings for the resolution of issues arising under the law; (6) acting (whether or not in the course of such practice) as mediator in connection with attempts to resolve issues that are, or if not resolved could be, the subject of proceedings; (7) drafting (whether or not in the course of such practice) documents intended to affect persons' rights or obligations; (8) teaching or researching law; (9) any activity that, in the relevant decision-maker's opinion⁴, is of a broadly similar nature to an activity within any of heads (1) to (8) above⁵.

1 le for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 50 (see PARA 530F.1): s 52(1).

2 Ibid s 52(2). For the purposes of s 52(2), a person's engagement in law-related activities during a period is to be disregarded if the engagement is negligible in terms of the amount of time engaged: s 52(3).

3 le for the purposes of ibid s 52.

4 In head (9) in the text 'the relevant decision-maker', in relation to determining whether a person satisfies the judicial-appointment eligibility condition on an N-year basis in a particular case, means (1) where the condition applies in respect of appointment by Her Majesty to an office or other position, the person whose function it is to recommend the exercise of Her Majesty's function of making appointments to that office or position; (2) where the condition applies in respect of appointment, by any person other than Her Majesty, to an office or other position, that person: ibid s 52(6). In s 52(6) 'appointment', in relation to an office or position, includes any form of selection for that office or position (whether called appointment or selection, or not): s 52(7).

5 Ibid s 52(4). For the purposes of s 52, an activity mentioned in s 52(4) is a 'law-related activity' whether it (1) is done on a full-time or part-time basis; (2) is or is not done for remuneration; (3) is done in the United Kingdom or elsewhere: s 52(5).

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501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

515-530 Judicial Appointments and Salaries

As to the appointment of the Head and Deputy Head of Civil Justice see PARA 530A. As to the power to alter judicial titles see PARA 530B. As to the appointment of the Head and Deputy Head of Criminal Justice see PARA 530C. As to the appointment of the Head and Deputy Head of Family Justice see PARA 530D. As to the appointment of the judicial post of Senior President of Tribunals see PARA 530E. As to the 'judicial-appointment eligibility condition' see PARA 530F.

For provision relating to judges having certain powers of District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) PARA 582A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(ii) Judicial Training/531. The Judicial Studies Board; in general.

(ii) Judicial Training

531. The Judicial Studies Board; in general.

There is no statutory requirement that persons appointed to judicial office in the Supreme Court or county courts should receive either induction training or continuation training.

However, in 1979 the Judicial Studies Board ('JSB') was established following a review by Lord Justice Bridge, to provide training for judges in the criminal jurisdiction. In 1985 its role was extended to cover the provision of training in the civil and family jurisdictions and the supervision of training for magistrates and judicial chairmen and members of tribunals¹.

The JSB is an independent body controlled by a Board whose members are appointed by the Lord Chancellor². The Board (and its subordinate committees) consists primarily of representatives of the judiciary but also includes representation from academia and from the Lord Chancellor's Department and the Home Office. For accounting purposes it is treated as an advisory non-departmental public body and its powers and obligations are set out in a Memorandum of Understanding between the JSB and the Lord Chancellor's Department³. The current memorandum is effective from 1 April 1999 and will be reviewed by the JSB and the Lord Chancellor after it has been in force for five years. Amendments may be made at any time by agreement between the JSB and the Lord Chancellor⁴.

The operational objectives of the JSB are agreed annually between the Lord Chancellor and the Board⁵. The current objectives are stated to be:

- 92 (1) to provide high quality training to full- and part-time judges in the exercise of their judicial function in civil, criminal and family law;
- 93 (2) to advise the Lord Chancellor on the policy for and content of training for lay magistrates, and on the efficiency and effectiveness with which magistrates' courts' committees deliver such training⁶;
- 94 (3) to advise the Lord Chancellor and government departments on the appropriate standards for, and content of, training for judicial officers in tribunals⁷;
- 95 (4) to advise the government on the training requirements of judges, magistrates and judicial officers in tribunals if proposed changes to the law are to be effective and to provide, and to advise on the content of, such training;
- 96 (5) to promote closer international co-operation over judicial training⁸.

The Director of Studies of the JSB is a circuit judge⁹ attached to the JSB on secondment. The Director of Studies attends meetings of the Board and all committees¹⁰.

The JSB draws up and publishes by 30 June each year a report to the Lord Chancellor on its activities. Copies are placed in the libraries of both Houses of Parliament. As far as practicable, the Lord Chancellor's Department and the Home Office keep the JSB informed of any proposed changes in the law (either within the Lord Chancellor's Department or elsewhere in government) which may have training implications for judges¹¹. The Lord Chancellor is responsible for allocating resources to the JSB¹² and the Lord Chancellor and the minister of state are answerable to Parliament on matters relating to the JSB¹³. The JSB is subject to internal and external audit¹⁴.

Members of the JSB staff are civil servants, either within the Lord Chancellor's Department or on secondment from other government departments¹⁵.

The JSB maintains an internet site on the World Wide Web which contains details of its work, the text of certain JSB publications which may be downloaded for personal use and the full text of the current Memorandum of Understanding¹⁶.

1 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 1. The JSB concentrates most of its resources on full time members of the circuit and district bench, although High Court judges are increasingly participating, eg in Access to Justice and Human Rights seminars: see the *Judicial Studies Board Annual Report* (2000-2001) PARA 2.8.

2 The Board may have up to 18 members, but no fewer than 10, who may be appointed on a personal basis or ex officio. Representatives from the judiciary, the magistracy and tribunals will constitute a majority of the JSB's members. The Chairman and members are normally appointed for three years and may be reappointed for

a further two years. The Lord Chancellor will consult the Chairman before appointing members to the JSB: Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 3.1.

3 See the text and notes 1-2 supra, 4-15 infra.

4 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARAS 2.2, 2.3.

5 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 6.2.

6 As to magistrates' courts' committees see generally MAGISTRATES.

7 As to tribunals see PARA 809 et seq post; and see generally ADMINISTRATIVE LAW.

8 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 6.1; additional information available, at the date at which this title states the law, at www.jsboard.co.uk.

9 As to circuit judges see PARA 522 et seq ante.

10 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 5. As to the committees of the JSB see PARA 532 post.

11 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 7.3.

12 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 8.1.

13 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 8.6.

14 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 9.7.

15 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 10.1.

16 At the date at which this title states the law, this information was available at www.jsboard.co.uk.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(ii) Judicial Training/532. Judicial Studies Board committees.

532. Judicial Studies Board committees.

The Judicial Studies Board ('JSB') may set up and appoint committees to advise it on its functions and to assist in carrying out agreed programmes¹. The JSB may delegate responsibilities to an executive committee².

There are currently six JSB committees: the Civil Committee, the Criminal Committee, the Family Committee, the Equal Treatment Advisory Committee, the Magisterial Committee and the Tribunals Committee³.

The Civil Committee is currently chaired by a High Court judge⁴. The committee organises induction courses for recorders and for deputy district judges⁴ and runs continuation courses for circuit judges, district judges and recorders⁶.

The Criminal Committee is also currently chaired by a High Court judge, as are the Family Committee and the Tribunals Committee⁷. The Criminal Committee provides induction and continuation training to enable full-time and part-time judges in the Crown Court to do their work effectively and organises continuation seminars for experienced judges at all levels. It also organises specialist seminars for experienced judges, for example on handling cases involving serious sexual offences, with the aim of further developing skills and exchanging experience within the judiciary⁸. The Family Committee delivers training in family law through a number of courses: there is a two-day conference for senior family judges, a seminar for those who may be nominated to hear public family law cases, induction and continuation seminars in private family law and a continuation seminar in public family law. All the family law courses combine instruction in judgecraft with lectures and discussion on related disciplines such as social work and child psychology⁹. The Tribunals Committee advises on, develops and monitors training for chairmen and members of tribunals both within the remit of the Lord Chancellor's Department and other sponsoring departments. The committee also provides training for chairmen of tribunals and those involved in delivering training¹⁰.

The Equal Treatment Advisory Committee ('ETAC') is currently chaired by a Court of Appeal judge¹¹. Its role is to advise the JSB and its other committees on ethnic minority issues in particular and equal treatment more generally and to produce relevant training materials as required. There is an ETAC adviser on each of the other JSB committees. The JSB also publishes the Equal Treatment Bench Book, which may be downloaded from the JSB website for personal use¹².

Training for the magistracy falls outside the scope of this title¹³.

1 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 4.1. The Chairman of the Board will consult the Lord Chancellor before appointments as chairmen of committees are made, or any lawyers are appointed as members: para 4.1.

2 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) PARA 4.2.

3 Memorandum of Understanding between the Judicial Studies Board and the Lord Chancellor (1 April 1999) Annex A.

4 *Judicial Studies Board Annual Report* (2000-2001) PARA 4.1. The other members as at 31 March 2001 were two circuit judges, two district judges, two academics, a recorder and two representatives from the Lord Chancellor's Department: para 4.2.

5 As to induction courses see PARA 533 post; and as to recorders and deputy district judges see PARAS 525-526 ante.

6 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 4.4-4.22. As to continuation courses see PARA 534 post.

7 This information is available, at the date at which this title states the law, at www.jsboard.co.uk.

8 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 3.5-3.24; and www.jsboard.co.uk.

- 9 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 5.5-5.32; and www.jsboard.co.uk.
- 10 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 7.5-7.23; and www.jsboard.co.uk.
- 11 See the *Judicial Studies Board Annual Report* (2000-2001) PARA 8.2; and www.jsboard.co.uk.
- 12 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 8.3-8.13; and www.jsboard.co.uk.
- 13 As to magistrates see generally MAGISTRATES.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(ii) Judicial Training/533. Induction training.

533. Induction training.

Recorders designate are required¹ to have satisfactorily completed their training programme before being authorised to sit as a recorder². The training programme includes attendance at one of the four-day residential induction courses run by the Judicial Studies Board ('JSB')³ as well as sitting in with a circuit judge in the Crown Court⁴, a meeting with representatives from the probation service⁵ and a prison visit⁶.

Before being authorised to sit in a county court⁷, recorders are required⁸ to attend a residential civil induction course run by the JSB and to undertake a period of sitting in with a circuit judge in a county court⁹. The JSB recommends that civil induction course participants should sit in with a district judge¹⁰ for a day before attending the course in order to observe the employment of case management skills¹¹.

Before being authorised to sit in a county court, deputy district judges are required¹² to attend a residential civil induction course and to undertake a period of sitting in with a district judge¹³.

A four-day private family law induction seminar is arranged annually for recorders and circuit judges newly appointed to hear private family law proceedings¹⁴. With regard to public law, an annual conference is held for circuit judges, newly appointed deputy High Court judges and district judges appointed to the Family Division who may become nominated care judges¹⁵ and induction seminars are held for newly appointed nominated care district judges¹⁶.

Equal treatment training forms part of all induction courses and seminars¹⁷.

1 This is not a statutory requirement: see PARA 531 ante.

2 *Judicial Studies Board Annual Report* (2000-2001) PARA 3.5. As to the appointment of recorders see PARA 526 ante.

- 3 As to the JSB see PARA 531 ante. Induction courses for recorders are run by the Criminal Committee of the JSB; as to the Criminal Committee see PARA 532 ante. The main feature of the course is the mock trial and the bulk of the time is spent in tutor groups discussing sentencing, summing up and other practical issues: see the *Judicial Studies Board Annual Report* (2000-2001) PARA 3.6.
- 4 As to circuit judges see PARA 522 ante; and as to the Crown Court see PARA 621 et seq post.
- 5 As to the probation service see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 733 et seq.
- 6 *Judicial Studies Board Annual Report* (2000-2001) PARA 3.5.
- 7 As to county courts see PARA 701 et seq post.
- 8 See note 1 supra.
- 9 *Judicial Studies Board Annual Report* (2000-2001) PARA 4.5.
- 10 As to district judges in county courts see PARA 728 post.
- 11 *Judicial Studies Board Annual Report* (2000-2001) PARA 4.6.
- 12 See note 1 supra.
- 13 *Judicial Studies Board Annual Report* (2000-2001) PARA 4.10. As to deputy district judges see PARA 728 post.
- 14 See the *Judicial Studies Board Annual Report* (2000-2001) PARA 5.5.
- 15 See the *Judicial Studies Board Annual Report* (2000-2001) PARA 5.15.
- 16 See the *Judicial Studies Board Annual Report* (2000-2001) PARA 5.18.
- 17 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 8.8-8.11.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(ii) Judicial Training/534. Continuation training.

534. Continuation training.

Through its Civil, Criminal, and Family Committees, the Judicial Studies Board ('JSB')¹ provides continuing education and training for full-time and part-time judges. Continuation training is normally in the form of seminars². The appropriate JSB committee will also organise seminars for judges to inform them of changes in the law, for example with regard to pension sharing³, human rights⁴ and arrangements for the use of the Welsh language in courts⁵. The Criminal

Committee contributes to the one-day sentencing seminars for circuit judges and recorders organised annually on each circuit by the presiding judges⁶.

The Equal Treatment Advisory Committee advises the other committees on the content of continuation training as appropriate⁷.

1 As to the Judicial Studies Board and its committees see PARAS 531-532 ante.

2 See eg the *Judicial Studies Board Annual Report* (2000-2001) PARAS 3.13-3.24 (criminal continuation seminars), paras 4.16-4.26 (civil continuation seminars), and PARAS 5.8-5.13 (family law continuation seminars).

3 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 5.29-5.32.

4 See the *Judicial Studies Board Annual Report* (2000-2001) PARA 2.1.

5 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 4.24-4.26. As to the use of the Welsh language in courts see PARA 305 ante.

6 *Judicial Studies Board Annual Report* (2000-2001) PARA 3.24.

7 See the *Judicial Studies Board Annual Report* (2000-2001) PARAS 8.8-8.11.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/ (iii) Judicial Retirement Dates; in general/535. Retirement dates for holders of certain judicial offices.

(iii) Judicial Retirement Dates; in general

535. Retirement dates for holders of certain judicial offices.

Subject to the following provisions, a person holding any of the offices¹ for the time being specified for these purposes² (a 'relevant office') must vacate that office³ on the day on which he attains the age of 70 years or such lower age as may for the time being be specified for the purpose in the enactments and instruments relating to that office, whenever passed or made⁴. Transitional provision is made with respect to persons who held relevant offices immediately before 31 March 1995⁵ and any reference in this paragraph to the compulsory retirement date for an office is to be construed in accordance with such transitional provision⁶. Subject to this, the requirement set out above applies whether the person was appointed to the office before or after 31 March 1995; but nothing in the Judicial Pensions and Retirement Act 1993, or in any amendment made by it, is to be taken to preclude a person from vacating his office before the compulsory retirement date⁷ for that office in his case or to prevent a person's appointment to

an office coming to an end before that date, in accordance with the terms on which he was appointed⁸.

If the Lord Chancellor⁹ considers it desirable in the public interest that the holder of a relevant office for which the compulsory retirement date in his case falls on or after the day on which he attains the age of 70 years should continue in that office after his compulsory retirement date, he may authorise the person to continue in office, either generally or for such purpose as he may notify to the person, for a period not exceeding one year and not extending beyond the day on which the person attains the age of 75 years¹⁰. If, on the expiration of the period for which a person is authorised to continue in office either by virtue of this provision or by any previous exercise of the power so conferred, the Lord Chancellor considers it desirable in the public interest to retain the person in office for a further period, he may authorise him to continue in office, either generally or for such purpose as he may notify to the person, for a further period not exceeding one year and not extending beyond the day on which the person attains the age of 75 years¹¹. These provisions do not, however, apply in respect of a Lord of Appeal in Ordinary¹² or a judge of the Supreme Court of England and Wales¹³.

After the day on which a person attains the age of 75 years, he may not hold any relevant office; nor may he:

- 97 (1) be a member of the Judicial Committee of the Privy Council, unless he is the Lord Chancellor¹⁴;
- 98 (2) participate in the hearing and determination of any appeal, or any petition for leave to appeal, to the House of Lords, unless he is the Lord Chancellor¹⁵;
- 99 (3) act as a judge under or by virtue of the provision of the Supreme Court Act 1981¹⁶ providing for assistance for the transaction of business in the Supreme Court¹⁷;
- 100 (4) hold office as a deputy circuit judge¹⁸;
- 101 (5) act as a deputy, or as a temporary additional officer, of the Supreme Court¹⁹ by virtue of the provision²⁰ allowing persons who would otherwise be disqualified by age to act as such deputy or additional officer²¹;
- 102 (6) hold office as a deputy district judge in any district registry²² by virtue of the provision²³ allowing persons who would otherwise be disqualified by age to hold such office or, in the case of a person who has previously held the office of district judge for a county court district, as a deputy district judge under the relevant provision²⁴ of the County Courts Act 1984²⁵;
- 103 (7) hold any office to which appointments are made by or under any Act or statutory instrument, for which there would otherwise be no compulsory retirement date and for appointment to which only persons who have held relevant office are eligible²⁶.

These restrictions apply whether or not the person was invited to act as a judge, or was appointed to the office in question, or to some other office by virtue of which he would otherwise hold the office in question, before 31 March 1995²⁷. There are similar restrictions on persons over the age of 75 sitting and acting as a judge in Northern Ireland²⁸ and on persons over the age of 70 being appointed or reappointed to membership of certain tribunals²⁹.

1 Any reference in the Judicial Pensions and Retirement Act 1993 s 26 (as amended) to a person's holding an office includes a reference to his being a member of, or otherwise included in, any panel or list of persons appointed, nominated, approved or otherwise selected to serve from time to time in that office (whether or not the panel or list is required by or under any enactment); and any reference in s 26 (as amended) or Sch 5 (as amended) (see note 2 *infra*) to any particular office or to an office of any class or description, or to a person's appointment to, or vacation of, an office, is to be construed accordingly: s 26(2).

2 I.e. an office specified in *ibid* s 26(1), Sch 5 (as amended). The specified offices in relation to the Supreme Court of England and Wales and the county courts are as follows: (1) judge of the Supreme Court of England

and Wales, other than the Lord Chancellor; (2) deputy judge of the High Court; (3) circuit judge; (4) master, Queen's Bench Division and deputy or temporary such master appointed under the Supreme Court Act 1981 s 91(1) otherwise than by virtue of s 91(3); (5) Admiralty Registrar and deputy or temporary Admiralty Registrar appointed as mentioned in head (4) supra; (6) master, Chancery Division and deputy or temporary such master appointed as mentioned in head (4) supra; (7) registrar in bankruptcy of the High Court and deputy or temporary such registrar appointed as mentioned in head (4) supra; (8) costs judge of the Supreme Court (referred to in the statute by the former title of 'taxing master of the Supreme Court') and deputy or temporary costs judge appointed as mentioned in head (4) supra; (9) district judge of the Principal Registry of the Family Division and deputy or temporary district judge of the Principal Registry of the Family Division appointed as mentioned in head (4) supra; (10) registrar of civil appeals and deputy or temporary such registrar appointed as mentioned in head (4) supra (but note that these offices have been abolished: see the Access to Justice Act 1999 s 70); (11) master of the Court of Protection and deputy or temporary such master appointed as mentioned in head (4) supra; (12) district judge (whether appointed under the Supreme Court Act 1981 s 100 (as amended) or the County Courts Act 1984 s 6 (as amended)); (13) deputy district judge appointed under the Supreme Court Act 1981 s 102 (as amended), except in a case where the person in question has previously held office as a district judge for a district registry; (14) deputy district judge appointed under the County Courts Act 1984 s 8 (as amended), except in a case where the person in question has previously held office as a district judge for a county court district; and (15) recorder and assistant recorder (but note that assistant recorders are no longer appointed: see PARA 526 ante); and other specified offices relevant to this title are as follows: (a) Lord of Appeal in Ordinary (see PARA 369 ante); (b) district judge (magistrates' courts) (see MAGISTRATES); (c) President of the Employment Tribunals (England and Wales) and member of the Employment Appeal Tribunal appointed under the Employment Tribunals Act 1996 s 22(1)(c) (see PARA 809 post; and EMPLOYMENT vol 41 (2009) PARAS 1364, 1384; the office of chairman of employment tribunals, appointed in pursuance of regulations under the Employment Tribunals Act 1996 s 1(1), is also specified); (d) Judge Advocate General (see PARA 801 post; and ARMED FORCES; the office of Judge Advocate of Her Majesty's Fleet is also specified); and (e) President or other member of the Immigration Appeal Tribunal (see PARA 810 post; and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM); Judicial Pensions and Retirement Act 1993 Sch 5 (amended in relation to the offices listed supra by the Employment Rights (Dispute Resolution) Act 1998 s 1(2); and by the Access to Justice Act 1999 s 78(2), Sch 11 paras 39, 41).

The Judicial Pensions and Retirement Act 1993 Sch 5 (as so amended) also lists a number of Northern Ireland judicial offices, Scottish judicial offices, and offices relating to various tribunals, the majority of which are not directly relevant to this title but all of which are listed here for convenient reference, as follows: Lord President of the Court of Session, Lord Justice Clerk, Judge of the Court of Session and Temporary Judge of the Court of Session; Lord Chief Justice of Northern Ireland, Lord Justice of Appeal in Northern Ireland and Judge of the High Court of Justice in Northern Ireland; sheriff principal or sheriff in Scotland and temporary sheriff principal in Scotland; county court judge in Northern Ireland, deputy county court judge in Northern Ireland and any appointment under the Judicature (Northern Ireland) Act 1978 s 70 or s 75(1) to an office from time to time specified Sch 3 col 1 (statutory office) or any appointment under s 74 to act in any such office; resident magistrate or deputy resident magistrate in Northern Ireland; Chief or other Social Security Commissioner (including appointments in pursuance of the Social Security Act 1998 Sch 4 para 1(2), and the equivalent office in Northern Ireland; Chief or other Child Support Commissioner (including appointments in pursuance of the Child Support Act 1991 Sch 4 para 4), and the equivalent office in Northern Ireland; President of appeal tribunals (within the meaning of the Social Security Act 1998 Pt I Ch 1) appointed under s 5 and the equivalent office in Northern Ireland; Chairman of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals and the equivalent office in Northern Ireland; Chairman of the Foreign Compensation Commission; Commons Commissioner; President of the Employment Tribunals (Scotland); President or Vice-President of Employment Tribunals and of the Fair Employment Tribunal (Northern Ireland); Chairman of industrial tribunals in Northern Ireland; Chairman of the Fair Employment Tribunal in Northern Ireland; President of the Industrial Court in Northern Ireland; President or other member of the Lands Tribunal, the Lands Tribunal for Scotland or the Lands Tribunal for Northern Ireland; President of Value Added Tax Tribunals; Chairman of value added tax tribunals; Commissioner for the special purposes of the Income Tax Acts appointed under the Taxes Management Act 1970 s 4; Deputy Special Commissioner appointed under the Taxes Management Act 1970 s 4A (as added); Commissioner for the general purposes of the income tax appointed under the Taxes Management Act 1970 s 2; adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator); President or other member of Pensions Appeal Tribunals; Chairman or other member of a Mental Health Review Tribunal constituted under the Mental Health Act 1983; chairman of a tribunal constituted for the purposes of the Misuse of Drugs Act 1971 ss 14, 15; chairman of an advisory body constituted for the purposes of the Misuse of Drugs Act 1971 s 14; appointed member of the former Restrictive Practices Court; chairman or other member of the tribunal constituted by the Income and Corporation Taxes Act 1988 s 706; arbitrator appointed under the Agricultural Holdings Act 1986 Sch 11 para 1(5); chairman, deputy-chairman or other member of an Agricultural Land Tribunal (other than an assessor added to the tribunal under the Agriculture Act 1947 Sch 9 para 16(2)); President of the Aircraft and Shipbuilding Industries Arbitration Tribunal; chairman of a tribunal established by the Betting, Gaming and Lotteries Act 1963 s 29; chairman or deputy chairman of the Copyright Tribunal; chairman or deputy chairman of the Information Tribunal; chairman of an Independent Schools Tribunal; president of a tribunal constituted under the Industry Act 1975 Sch 3; chairman of the tribunal constituted under the National Health Service Act 1977 Sch 9; chairman of the Plant Varieties and Seeds Tribunal; chairman of a Registered Homes Tribunal constituted under the Registered Homes Act 1984; chairman or other member of Rent Assessment Committees appointed by the Lord Chancellor

under the Rent Act 1977 Sch 10; President or chairman of the Transport Tribunal; President of the tribunal established under the Wireless Telegraphy Act 1949 s 9; Wreck commissioner appointed under the Merchant Shipping Act 1995 s 297(1); Chairman of a Reinstatement Committee constituted under the Reserve Forces (Safeguard of Employment) Act 1985; Chairman or other member of a reserve forces appeal tribunal constituted under the Reserve Forces Act 1996 Pt IX; member of a panel constituted under the Social Security Act 1998 s 6(1), and the equivalent office in Northern Ireland; and member of the Financial Services and Markets Tribunal: see the Judicial Pensions and Retirement Act 1993 Sch 5 (as further amended).

The appropriate minister may by order amend Sch 5 (as amended) by adding offices to those for the time being specified therein: s 26(9)(a). The appropriate minister, except in relation to judicial offices whose jurisdiction is exercised exclusively in Scotland, is the Lord Chancellor: see s 30(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. In the exercise of this power, the Lord Chancellor has made the Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 1999, SI 1999/1454, which makes amendments not directly relevant to this title.

Any power conferred by the Judicial Pensions and Retirement Act 1993 to make regulations or an order is exercisable by statutory instrument: s 29(1). A statutory instrument which contains (whether alone or with other provisions) regulations or an order under that Act, other than an order under s 31(2) (commencement orders) is subject to annulment in pursuance of a resolution of either House of Parliament: s 29(2). Any power conferred by that Act to make regulations or an order includes power, exercisable in the same manner, to make such transitional, consequential, supplementary or incidental provision or savings as may appear to the authority making the regulations or order to be necessary or expedient for the purposes of, or in connection with, the regulations or order: s 29(3). The provision that may be made under or by virtue of s 29(3) includes provision modifying the operation of that Act or any other enactment: s 29(4). The amendment by that Act of any provision contained in regulations or an order is not to be taken to have prejudiced any power to make further regulations or orders amending or revoking that provision: s 29(5). Regulations and orders under that Act may make different provision for different cases or classes of case: s 29(6).

3 Any reference to vacating an office includes a reference to retiring from it: *ibid* s 26(12).

4 *Ibid* s 26(1).

5 See *ibid* s 26(11), Sch 7. Schedule 7 protects the position of persons holding, or seeking appointment or reappointment to, certain salaried offices (see Sch 7 para 2) or holding or seeking reappointment to certain fee-paid offices (see Sch 7 para 3) or holding certain offices by virtue of a continuation power (see Sch 7 para 4) immediately before 31 March 1995 and makes provision for the ascertainment of their potential retirement date (see Sch 7 para 5).

31 March 1995 is the appointed day for these purposes: see ss 26(3), (12), 31(2); and the Judicial Pensions and Retirement Act 1993 (Commencement) Order 1995, SI 1995/631, art 2.

6 Judicial Pensions and Retirement Act 1993 s 26(11)(b). Section 26(1), (3) is subject to the provisions of Sch 7 (see note 5 *supra*): s 26(11)(a).

7 'The compulsory retirement date' for an office means the day on which a holder of that office is or, apart from any continuation power, would be required by any enactment or statutory instrument to vacate that office, being either the day on which he attains a particular age or a day falling to be determined by reference to his attaining a particular age; and 'continuation power' means a power conferred by an enactment or statutory instrument on a minister of the Crown to authorise the holder of an office to continue in that office until a later day than that on which, apart from any exercise of the power, he would be required by any enactment or statutory instrument to vacate that office: Judicial Pensions and Retirement Act 1993 s 26(12).

8 *Ibid* s 26(3).

9 *Ie* the appropriate minister: see note 2 *supra*.

10 Judicial Pensions and Retirement Act 1993 s 26(5).

11 *Ibid* s 26(6).

12 As to Lords of Appeal in Ordinary see PARA 369 ante.

13 Judicial Pensions and Retirement Act 1993 s 26(4). Certain senior Northern Ireland and Scottish judges are also excluded: see s 26(4)(c), (d).

14 *Ibid* s 26(7)(a). As to the Judicial Committee of the Privy Council see PARA 401 et seq ante.

15 *Ibid* s 26(7)(b). As to appeals to the House of Lords see PARA 360 et seq ante.

- 16 le under or by virtue of the Supreme Court Act 1981 s 9 (as amended): see PARA 519 ante.
- 17 Judicial Pensions and Retirement Act 1993 s 26(7)(c).
- 18 le within the meaning of the Courts Act 1971 s 24 (as substituted and amended: see PARA 525 ante): Judicial Pensions and Retirement Act 1993 s 26(7)(d).
- 19 le under the Supreme Court Act 1981 s 91(1): see PARA 649 post.
- 20 le by virtue of ibid s 91(3) (as amended): see PARA 649 post.
- 21 Judicial Pensions and Retirement Act 1993 s 26(7)(f).
- 22 le under the Supreme Court Act 1981 s 102(1) (as amended): see PARA 662 post.
- 23 le by virtue of ibid s 102(3) (as amended): see PARA 662 post.
- 24 le under ibid s 8 (as amended): see PARA 728 post.
- 25 Judicial Pensions and Retirement Act 1993 s 26(7)(g).
- 26 Ibid s 26(7)(h).
- 27 Ibid s 26(7).
- 28 See ibid s 26(7)(e).
- 29 See ibid s 26(8) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 93(a); the School Inspections Act 1996 s 47(1), Sch 6 para 6; and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 113). The Lord Chancellor may amend the Judicial Pensions and Retirement Act 1993 s 26(8) (as amended) by adding offices to those for the time being specified therein: s 26(9)(b).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

535 Retirement dates for holders of certain judicial offices

TEXT AND NOTES--Judicial Pensions and Retirement Act 1993 s 26, Sch 5 further amended: Constitutional Reform Act 2005 Sch 4 paras 228, 230, Sch 18 Pt 2; Mental Capacity Act 2005 Sch 6 para 38(3); Tribunals, Courts and Enforcement Act 2007 Sch 8 para 31(2), (3), Sch 11 paras 12, 13. See also 2005 Act s 19, Sch 7 para 4 (amended by 2007 Act s 144(7)) (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

TEXT AND NOTES 2, 12, 13--In Judicial Pensions and Retirement Act 1993 s 26(4), Sch 5 for 'Lord of Appeal in Ordinary' read 'Judge of the Supreme Court': Constitutional Reform Act 2005 s 35(3) (in force 1 October 2009: SI 2009/1604).

NOTE 2--Head (10). Access to Justice Act 1999 s 70 repealed: Statute Law (Repeals) Act 2004.

Head (11). Entries relating to the master and deputy or temporary master of the Court of Protection omitted, except in the case of a person holding any of those offices immediately before the commencement of the Mental Capacity Act 2005 Sch 6 para 38(3) (ie 1 October 2007: SI 2007/1897): 1993 Act Sch 5 (amended by 2005 Act Sch 6 para 38(3)).

Also, head (16) adjudicator to Her Majesty's Land Registry: Judicial Pensions and Retirement Act 1993 Sch 5 (amended by the Land Registration Act 2002 Sch 11 para 28).

In 1993 Act Sch 5 add reference to Member of the Pensions Regulator Tribunal: Pensions Act 2004 Sch 4 para 17(3). Now head (e) President or other member of the Asylum and Immigration Tribunal: 1993 Act Sch 5 (amended by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 8(2).

Reference to Chief or other Child Support Commissioner omitted; reference to the Judicature (Northern Ireland) Act 1978 s 75(1) omitted; reference to adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator) is now to adjudicator for the purposes of the Nationality, Immigration and Asylum Act 2002 Pt 5 (ss 81-117); reference to chairman of an Independent Schools Tribunal omitted; reference to the chairman of the tribunal constituted under the National Health Service Act 1977 Sch 9 omitted; reference to the President of the tribunal established under the Wireless Telegraphy Act 1949 s 9 omitted; reference to 'Judge Advocate of her Majesty's Fleet' omitted; reference to persons authorised by the Adjudicator to Her Majesty's Land Registry in accordance with the Land Registration Act 2002 Sch 9 para 4 to carry out functions which are not of an administrative character added; reference to the Lands Tribunal omitted: 1993 Act Sch 5 (amended by the Education Act 2002 Sch 22 Pt 3; the Nationality, Immigration and Asylum Act 2002 Sch 7 para 19; the Communications Act 2003 Sch 19; the Courts Act 2003 Sch 10; the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 159; the Armed Forces Act 2006 Sch 17; SI 2007/675; SI 2007/2185; SI 2008/2833; SI 2008/3139; SI 2009/1307).

See further Constitutional Reform Act 2005 s 85, Sch 14 Pt 3; and PARA 515B.18.

NOTE 5--1993 Act Sch 7 para 5 amended: Education Act 2002 Sch 22 Pt 3; Communications Act 2003 Sch 19; Mental Capacity Act 2005 Sch 6 para 38(4); SI 2009/1307.

TEXT AND NOTE 15--Now, head (2) act as a judge of the Supreme Court under the Constitutional Reform Act 2005 s 38 (see PARA 521C.1): 1993 Act s 26(7)(b) (substituted by Constitutional Reform Act 2005 s 38(3)) (in force 1 October 2009: SI 2009/1604).

NOTE 29--1993 Act s 26(8) further amended: Communications Act 2003 Sch 19. School Inspections Act 1996 s 47(1), Sch 6 para 6 repealed: Education Act 2005 s 60, Sch 19 Pt 1.

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536. Completion of proceedings before retirement.

Notwithstanding that a person has vacated or otherwise ceased to hold an office to which these provisions apply¹, he may act as if he had not ceased to hold the office for the purpose of continuing to deal with, giving judgment in, or dealing with any ancillary matter relating to, any case begun before him before he ceased to hold that office². For that purpose, and for the purpose of any proceedings arising out of any such case or matter, he is to be treated as being or, as the case may be, as having been a holder of that office³. However, nothing in these provisions authorises him to do anything if he ceased to hold the office by virtue of his removal from it⁴.

Where a person has vacated or otherwise ceased to hold a qualifying judicial office⁵ but the office in question is one to which the above provisions apply, then any remuneration that may be paid in respect of service of his in that office by virtue of those provisions is to be remuneration by payment of fees and not a salary and accordingly that service is not to be regarded as service in qualifying judicial office⁶.

1 The offices of the Supreme Court and county courts to which the Judicial Pensions and Retirement Act 1993 s 27 (as amended) (see the text and notes 2-6 infra) applies are: (1) any relevant office, within the meaning of s 26 (as amended) (see PARA 535 note 2 ante); (2) any office falling within any of the paragraphs of s 26(7) (see PARA 535 ante at heads (1)-(7) in the text); and (3) the office of Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals (see PARAS 655, 657 post): s 27(3)(a)-(c). The other offices to which s 27 applies are (a) Vice Judge Advocate General; (b) Assistant Judge Advocate General; (c) a part-time sheriff (in Scotland); and (d) Chairman of the Criminal Injuries Compensation Board: s 27(3)(c)-(g) (amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 Pt 2 para 10, Sch 7 Pt 3; and by the Bail, Judicial Appointments etc (Scotland) Act 2000 s 12, Schedule). If and to the extent that any prohibition imposed by the Judicial Pensions and Retirement Act 1993 s 26(7) would not otherwise be regarded as a prohibition on the holding of an office, it is to be treated for these purposes as if it were such a prohibition, and references in s 27 (as amended) to office, or to vacating or otherwise ceasing to hold office, are to be construed accordingly: s 27(4).

2 Ibid s 27(1)(a).

3 Ibid s 27(1)(b).

4 Ibid s 27(1).

5 As to qualifying judicial offices see ibid s 1(6), Sch 1 (as amended); and PARA 539 post.

UPDATE

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

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(iv) Judicial Pensions

A. IN GENERAL

537. Legislation relating to judicial pensions.

The Judicial Pensions and Retirement Act 1993, which came into force on 31 March 1995¹, replaces but does not repeal the previous arrangements for judicial pensions which are contained in the Judicial Pensions Act 1981. The 1993 legislation applies to all persons first holding qualifying judicial office² on or after 31 March 1995, to certain persons previously holding such office who are appointed to new offices on or after that day and to certain persons entitled to make an election that it is to apply to them³.

Persons to whom the 1993 legislation does not apply but who are entitled to a pension under the Judicial Pensions Act 1981 continue to be so entitled⁴.

Transitional arrangements were made in relation to pensions for court officers and staff affected by the reorganisation of the court system under the Courts Act 1971⁵.

The Lord Chancellor must by order make provision with respect to pensions payable to or in respect of any holder of a judicial office who serves as a judge of the European Court of Human Rights⁶. The holder of a United Kingdom judicial office who also holds office in certain other international courts does not count as holding the United Kingdom judicial office for pensions purposes⁷.

There must be charged on, and paid out of, the Consolidated Fund⁸ any pension or lump sum under Part I of the 1993 Act⁹ payable to or in respect of a person who has held office as a judge¹⁰ and certain other payments by way of pension or lump sum authorised¹¹ to be made to or in respect of such a person¹². Except as so provided, any pension or lump sum payable under Part I of that Act, or so authorised to be made¹³, must be met out of money provided by Parliament¹⁴. There must also be charged on, and paid out of, the Consolidated Fund any increase attributable to the provisions of the 1993 Act in the sums charged on, and payable out of, that Fund by or under any other enactment¹⁵ and there must be paid out of money provided by Parliament any increase attributable to the 1993 Act in the sums payable out of money so provided under any other enactment¹⁶. Any administrative expenses incurred under the 1993 Act by a minister of the Crown or government department must be defrayed out of money provided by Parliament¹⁷. Nothing in the above provisions, however, applies in relation to any pension or other benefits payable¹⁸ by virtue of voluntary contributions¹⁹.

Certain pensions under Part I of the Judicial Pensions Act 1981²⁰, and lump sums, and widow's, widower's or children's pensions under Part II of the 1981 Act²¹ conditional on eligibility for a pension payable out of the Consolidated Fund are to be charged on and paid out of the Consolidated Fund²².

The Pensions (Increase) Act 1971 which provides for periodic uprating of official pensions applies to pensions under the Judicial Pensions Act 1981 and the Judicial Pensions and Retirement Act 1993²³.

1 See PARA 535 note 5 ante.

2 As to qualifying judicial office see PARA 539 post.

3 See the Judicial Pensions and Retirement Act 1993 s 1; and PARA 538 post. For the purposes of the Income and Corporation Taxes Act 1988 Pt XIV Ch 1 (ss 590-612) (as amended) (retirement benefit schemes: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 747 et seq) the provisions of the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq post) are to be regarded as amendments, for such persons as are mentioned in s 1(1), of the statutory schemes constituted by the Judicial Pensions Act 1981; and, accordingly, any scheme constituted under the Judicial Pensions and Retirement Act 1993 Pt I (as amended) is

taken to have been established before 14 March 1989 and is a relevant statutory scheme for those purposes: s 18(1).

4 As to the Judicial Pensions Act 1981 see PARA 556 et seq post.

5 See the Courts Act 1971 s 56(3), Sch 10 para 15.

6 Human Rights Act 1998 s 18(6), Sch 4 para 1(1). A pensions order must include such provision as the Lord Chancellor considers is necessary to secure that: (1) a European Court of Human Rights ('ECtHR') judge who was, immediately before his appointment as an ECtHR judge, a member of a judicial pension scheme is entitled to remain as a member of that scheme; (2) the terms on which he remains a member of the scheme are those which would have been applicable had he not been appointed as an ECtHR judge; and (3) entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ECtHR judge, his salary was that which would (but for s 18(4): see PARA 521 ante) have been payable to him in respect of his continuing service as the holder of his judicial office: Sch 4 paras 1(2), 4. A pensions order may, in particular, make provision: (a) for any contributions which are payable by a person who remains a member of a scheme as a result of the order, and which would otherwise be payable by deduction from his salary, to be made otherwise than by deduction from his salary as an ECtHR judge; and (b) for such contributions to be collected in such manner as may be determined by the administrators of the scheme: Sch 4 para 2. A pensions order may amend any provision of, or made under, a pensions Act in such manner and to such extent as the Lord Chancellor considers necessary or expedient to ensure the proper administration of any scheme to which it relates: Sch 4 para 3. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

In the exercise of this power the Lord Chancellor has made the Judicial Pensions (European Court of Human Rights) Order 1998, SI 1998/2768, which came into force on 7 December 1998: art 1. Nothing in the Order prevents the operation of any provisions of the Judicial Pensions Act 1981 Act or the Judicial Pensions and Retirement Act 1993 whereby (whether by election or otherwise) a person becomes, or ceases to be, a member of one of the judicial pension schemes constituted under the 1981 Act, or becomes, or ceases to be, a person to whom Part I of the 1993 Act applies: Judicial Pensions (European Court of Human Rights) Order 1998, SI 1998/2768, art 3. During the whole of his ECtHR service, the ECtHR judge's salary, for the purposes of the 1981 Act and the 1993 Act, must be treated as being the salary which would be payable to him if he had not been appointed as an ECtHR judge and had continued to perform the duties of his UK judicial office: art 5. Contributions prescribed for the purposes of the Judicial Pensions Act 1981 ss 23, 33A (as amended and added respectively: see PARAS 567, 570 post) and the Judicial Pensions and Retirement Act 1993 ss 9, 10 (as amended) (see PARAS 548-549 post) are not to be made by deduction from salary, but must be collected in such manner as may be determined by the administrators of the relevant judicial pension scheme: Judicial Pensions (European Court of Human Rights) Order 1998, SI 1998/2768, art 6. For the purposes of the 1981 Act, the ECtHR judge is to be treated during the whole of his ECtHR service as serving in his UK judicial office and, subject to the operation of any of the provisions referred to in the Judicial Pensions (European Court of Human Rights) Order 1998, SI 1998/2768, art 3, the whole of his ECtHR service counts as relevant service; and for the purposes of the 1993 Act, the ECtHR judge is to be treated, during the whole of his ECHR service, as holding, and serving in, his UK judicial office, which must be treated as a qualifying judicial office: Judicial Pensions (European Court of Human Rights) Order 1998, SI 1998/2768, arts 7, 8. As to qualifying judicial office for the purposes of the 1993 Act see PARA 539 post. For transitional provisions where an ECtHR judge transfers from the scheme under the 1981 Act to the scheme under the 1993 Act see the Judicial Pensions (European Court of Human Rights) Order 1998, SI 1998/2768, art 4.

7 See the Access to Justice Act 1999 s 68(3)(b); and PARA 521 ante.

8 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

9 Ie under the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq post.

10 Ie a person who has held any of the offices specified in *ibid* s 1(6), Sch 1 Pt I (as amended): see PARA 539 post.

11 Ie under *ibid* s 19: see PARA 551 post.

12 *Ibid* s 28(1).

13 See note 11 *supra*.

14 Judicial Pensions and Retirement Act 1993 s 28(2).

15 *Ibid* s 28(3).

16 *Ibid* s 28(4).

- 17 Ibid s 28(5).
- 18 Ie benefits payable under or by virtue of ibid s 10: see PARA 549 post.
- 19 Ibid s 28(7).
- 20 Ie any pension under the Judicial Pensions Act 1981 Pt I Ch I (ss 1-4) (as amended) or under s 5 or s 7 (both as amended): see PARAS 556-560 post.
- 21 Ie under ibid Pt II (ss 16-29) (as amended): see PARA 562 et seq post.
- 22 Ibid s 31 (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 30(b)).
- 23 See the Judicial Pensions Act 1981 s 30; the Judicial Pensions and Retirement Act 1993 s 22(1). As to the Pensions (Increase) Act 1971 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 615-616.

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As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

537 Legislation relating to judicial pensions

NOTE 3--Certain provisions of the 1988 Act Pt XIV Ch I are replaced by provisions of the Income Tax (Earnings and Pensions) Act 2003. For destination of replaced provisions, see table, INCOME TAXATION vol 23(2) (Reissue) PARA 1900A. 1993 Act s 18 repealed: SI 2006/497.

TEXT AND NOTE 6--See further Constitutional Reform Act 2005 s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 22--1981 Act s 31 further amended: SI 2005/3325.

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B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993

(A) APPLICATION OF THE 1993 LEGISLATION

538. Persons to whom the 1993 pensions legislation applies.

Part I of the Judicial Pensions and Retirement Act 1993¹, which makes new arrangements for judicial pensions, applies:

- 104 (1) to any person who first holds qualifying judicial office² on or after 31 March 1995³;
- 105 (2) to any person who, immediately before that date, was holding any qualifying judicial office, service in which was, in his case, subject to a judicial pension scheme and who, on or after that date, ceases to hold that office and is appointed to some other qualifying judicial office, service in which would (apart from the Judicial Pensions and Retirement Act 1993) have been subject, in his case, to some other judicial pension scheme⁴;
- 106 (3) to any person who was not holding qualifying judicial office immediately before that date, by virtue of having retired from such office, but who, on or after that date, is again appointed to such office⁵; and
- 107 (4) to any person who makes an election in the prescribed manner for that Part of the 1993 Act to apply to him⁶.

Except as provided⁷, Part I of the Judicial Pensions and Retirement Act 1993 does not apply to a person at any time when an election for membership of a personal pension scheme rather than membership of the judicial pension scheme⁸ is in force in respect of him⁹.

Where Part I of the 1993 Act applies, or would, apart from an election for a personal pension, apply, to a person, no other judicial pension scheme is to have effect in relation to him, apart from (a) any scheme established by regulations entitling such persons to make additional voluntary contributions¹⁰; and (b) the scheme constituted¹¹ to provide benefits in respect of earnings in excess of pension-capped salary¹², and no pension or lump sum under any such scheme is to be paid to or in respect of him¹³. This is without prejudice to a person's accrued rights to benefit under any such scheme in respect of service before the relevant day¹⁴.

Where Part I of the 1993 Act begins to apply to a person by virtue of head (2), head (3) or head (4) above, any relevant rights¹⁵ of his must be transferred to the scheme constituted by that Part and entitlement to, and the rate or amount of any judicial pension or derivative benefit¹⁶ payable under that Part to or in respect of him must accordingly be determined by reference to the rights so transferred and his service in qualifying judicial office on or after the relevant day¹⁷. Regulations¹⁸ may make provision for calculating, whether by actuarial assessment or otherwise, the amount or value of the rights so transferred and prescribing¹⁹ the manner in which those rights are to be given effect under that Part²⁰.

1 Ie the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see the text and notes 2-9 *infra*; and PARA 539 *et seq post*.

2 As to qualifying judicial office see PARA 539 *post*.

3 Judicial Pensions and Retirement Act 1993 s 1(1)(a). 31 March 1995 is the appointed day for these purposes: see PARA 535 note 5 *ante*.

4 Ibid s 1(1)(b).

5 Ibid s 1(1)(c).

6 Ibid s 1(1)(d). As to making such an election see s 1(2)-(4); and PARA 540 *post*.

7 Ie by *ibid* s 13 (as amended): see PARA 541 *post*.

8 For the meaning of 'personal pension scheme' and as to making such an election see *ibid* s 13 (as amended); and PARA 541 *post*. 'Judicial pension' means a pension under s 2: s 2(8).

9 Ibid s 1(5).

10 Ie any scheme established by regulations under *ibid* s 10: see PARA 545 *post*.

11 Ie constituted by *ibid* s 19: see PARA 551 *post*.

12 Ibid s 11(1)(a).

13 Ibid s 11(1)(b).

14 Ibid s 11(2). In the case of a person to whom Pt I (as amended) applies, any such rights which he may have must accordingly be given effect in accordance with s 12 (see the text and notes 15-19 infra): s 11(2). Section 11(1), (2) does not preclude the payment of a pension or other benefits under the principal civil service pension scheme, or the principal civil service pension scheme for the civil service of Northern Ireland, in respect of service before the relevant day, or affect any rights to a pension or other benefits under either of those schemes in respect of such service, unless at least some of that service was in qualifying judicial office: s 11(3). For these purposes, the 'relevant day', in the case of any person, means the day on which Pt I (as amended) first applies, or would, apart from s 13(8)(a) (see PARA 541 post) first apply, to him: s 11(4). As to the principal civil service pension scheme see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 576.

15 For these purposes, a person's 'relevant rights' are his accrued rights to benefit under any judicial pension scheme constituted otherwise than by or under the Judicial Pensions and Retirement Act 1993; but rights under the principal civil service pension scheme, or the principal civil service pension scheme for the civil service of Northern Ireland, are not to be regarded as relevant rights for these purposes unless at least some of the person's service which was subject to the scheme in question was service in qualifying judicial office and, in that event, all his rights under that scheme must be regarded as relevant rights: s 12(3).

16 'Derivative benefit' means a lump sum under ibid s 4 (see PARA 545 post) or a surviving spouse's or children's pension: s 30(1).

17 Ibid s 12(1). 'The relevant day', in relation to any person, means the day on which Pt I (as amended) first applies to him: s 12(4).

18 For these purposes, 'regulations' means regulations made by the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 ante) with the concurrence of the Treasury: ibid s 12(4). As to the making of regulations see PARA 535 note 2 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

19 For these purposes, 'prescribe' means prescribe by regulations: ibid s 12(4).

20 Ibid s 12(3)(a), (b). Without prejudice to the generality of s 12(3)(b), regulations thereunder may provide for those rights to be so given effect by crediting the person in question with such service on or after the relevant day as may be prescribed: s 12(3).

In the exercise of the power conferred by s 12(2), the Lord Chancellor has made the Judicial Pensions (Transfer between Judicial Pension Schemes) Regulations 1995, SI 1995/636 (as amended), which came into force on 31 March 1995: reg 1. Those regulations apply for the purposes of valuing a member's relevant rights which are to be transferred to the Part I scheme (ie the scheme constituted under the Judicial Pensions and Retirement Act 1993 Pt I (as amended)) under s 12: Judicial Pensions (Transfer between Judicial Pension Schemes) Regulations 1995, SI 1995/636, regs 2, 3(1). The sum of a member's relevant rights in his last existing scheme and his relevant rights in any former scheme form the total amount to be transferred into the Part I scheme, which must be expressed as a period of notional service in the office held by the member at the date of transfer in accordance with reg 5 (last existing scheme; the transfer value arrived at by applying the prescribed formula must be rounded up to the next full day and where a member holds two qualifying judicial offices concurrently, no day is to be counted more than once: reg 5(3), (4)); reg 6 (former schemes, to which reg 5(3), (4) also applies: see reg 6(3)); and reg 7, Schs 1, 2 (as amended) (voluntary contributions: valuation of benefits purchased under the Judicial Added Benefits Scheme (see PARA 550 post)): reg 3(2), (3). 'Last existing scheme' means: (1) the relevant scheme of the member immediately prior to his transfer to the Part I scheme; (2) where a member was a member of a relevant scheme prior to appointment as Lord Chancellor and is subsequently reappointed to qualifying judicial office, the relevant scheme at the date he last held qualifying judicial office; or (3) where the Judicial Pensions and Retirement Act 1993 Pt I (as amended) applies to a member by virtue of s 1(1)(c) (see head (3) in the text), the relevant scheme of the member at the date he last held qualifying judicial office; 'member' means a member of a relevant scheme to whom s 12 applies; and 'relevant scheme' means any judicial pension scheme constituted otherwise than by or under the 1993 Act: Judicial Pensions (Transfer between Judicial Pension Schemes) Regulations 1995, SI 1995/636, reg 2. For the appropriate service multiplier to be used in valuing a member's relevant rights see reg 4. Any added years which a member may have purchased while belonging to a relevant scheme are to be treated, for the purposes of reg 5 (valuation of relevant rights: last existing scheme), as if they had been actual years served under his last existing scheme: reg 8. As to relevant rights in voluntary contributions schemes see reg 9. Any service credited to a member by virtue of the Judicial Pensions and Retirement Act 1993 s 12 and the Judicial Pensions (Transfer between Judicial Pension Schemes) Regulations 1995, SI 1995/636, is to be treated for all purposes in the same way as actual service by the member after the relevant day: reg 10.

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538 Persons to whom the 1993 pensions legislation applies

NOTE 16--Definition of 'derivative benefit' in 1993 Act s 30(1) amended: SI 2005/3325.

NOTES 18, 20--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

NOTE 20--SI 1995/636 Sch 2 further amended: SI 2007/1898.

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539. Qualifying judicial office.

A person is regarded as holding, or serving in, qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993 at any time when he holds, on a salaried basis, any one or more of the specified¹ offices²; and a person holds an office 'on a salaried basis' if and so long as, and to the extent that, his service in the office is remunerated by payment of a salary and that salary is not subject to terms which preclude rights to pensions and other benefits accruing by reference to it³. The specified offices in the Supreme Court of England and Wales and county courts are: Lord Chief Justice of England⁴; Master of the Rolls⁵; Lord Justice of Appeal⁶; President of the Family Division⁷; Vice-Chancellor⁸; High Court Judge⁹; Recorder of London¹⁰; Common Serjeant¹¹; circuit judge¹²; master, Queen's Bench Division¹³; Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals¹⁴; Admiralty Registrar¹⁵; master, Chancery Division¹⁶; registrar in bankruptcy of the High Court¹⁷; costs judge of the Supreme Court (referred to in the legislation by the previous title of 'taxing master')¹⁸; district judge of the Principal Registry of the Family Division¹⁹; the former office of registrar of civil appeals²⁰; master of the Court of Protection²¹; and district judge²². The following judicial offices relevant to this title are also specified offices: Lord of Appeal in Ordinary²³; district judge (magistrates' courts) and the former office of stipendiary magistrate which it replaces²⁴; and Judge Advocate General²⁵. Additionally, a number of equivalent judicial offices in Scotland and Northern Ireland are specified²⁶, as are other offices most of which relate to membership of tribunals²⁷.

The Lord Chancellor²⁸ may, by order made by statutory instrument²⁹, amend Schedule 1 to the 1993 Act which specifies these offices, by adding offices to those for the time being there specified³⁰.

1 le one or more of the offices specified in the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt I or Pt II (Sch 1 Pt I (listing judges) amended by the Access to Justice Act 1999 s 78(2), Sch 11 paras 39, 40; and by the Judicial Pensions (Qualifying Judicial Offices etc) (City of London) Order 1995, SI 1995/633, art 3; the Judicial Pensions and Retirement Act 1993 Sch 1 Pt II (listing masters, district judges, registrars etc and tribunal members) amended by the Employment Tribunals Act 1996 s 43, Sch 1 para 10; the Social Security Act 1998 s 86(1), Sch 7 para 123, Sch 8; the Employment Rights (Dispute Resolution) Act 1998 s 1(2); the Immigration and Asylum Act 1999 s 169(1), Sch 14 para 98; the Financial Services and Markets Act 2000 s 432(1), Sch 20 para 7; and by the Industrial Tribunals (Northern Ireland) Order 1996, SI 1996/1921, art 26, Sch 1 para 9; the Fair Employment and Treatment (Northern Ireland) Order 1998, SI 1998/3162, art 105(1), Sch 3; the Social Security (Northern Ireland) Order 1998, SI 1998/1506, art 78, Sch 6 para 92, Sch 7; the Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 1999, SI 1999/1454, art 2; and the Judicial Pensions (Qualifying Judicial Offices) (President of the Competition Commission Appeal Tribunals) Order 1999, SI 1999/2283, art 2).

2 Judicial Pensions and Retirement Act 1993 s 1(6). Any reference in the Judicial Pensions and Retirement Act 1993 to a 'qualifying judicial office' is a reference to any office so specified if it is held on a salaried basis: s 1(6).

3 Ibid s 1(7). The reference in the text to an office being held on a salaried basis is to be construed accordingly: s 1(7).

4 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

6 As to the Lords Justices of Appeal see PARA 515 ante, para 637 post.

7 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

8 As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

9 As to High Court judges see PARA 515 ante, paras 602, 619 post.

10 Subject to the Judicial Pensions and Retirement Act 1993 ss 1(8), 21 (see the text and note 30 infra; and PARA 539 note 3 post) and to any regulations under the Superannuation Act 1965 s 38 (as amended) or s 38A (as added) (employment in more than one public office), nothing in the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended) applies in relation to the pensions and other benefits payable to or in respect of a person in respect of his service as a circuit judge by virtue of holding the office of Recorder of London or Common Serjeant (see PARA 522 ante); and accordingly those matters continue to be provided for as mentioned in the City of London (Courts) Act 1964 s 7 (remuneration, pensions and other benefits in respect of those offices to be defrayed by the Common Council); and service as a circuit judge by virtue of holding either of those offices is not to be regarded as service in qualifying judicial office: Judicial Pensions and Retirement Act 1993 s 15.

11 See note 10 supra.

12 As to circuit judges see PARA 522 ante. See also note 10 supra.

13 As to Queen's Bench masters see PARA 654 post.

14 As to the Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals see PARAS 654, 657 post.

15 As to the Admiralty Registrar see PARA 660 post.

16 As to Chancery masters see PARA 655 post.

17 As to registrars in bankruptcy see PARA 666 post.

18 As to costs judges see PARA 656 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1734.

19 As to district judges of the Principal Registry of the Family Division see PARA 658 post.

20 This office was abolished by the Access to Justice Act 1999 s 70. As to the Head of the Civil Appeals Office see PARA 670 post.

21 As to the master of the Court of Protection see PARA 668 post.

22 As to district judges in the district registries of the High Court see PARA 529 ante, para 661 post; and as to district judges in county courts see PARA 530 ante, para 728 post.

23 As to Lords of Appeal in Ordinary see PARA 369 ante.

24 As to district judges (magistrates' courts) see MAGISTRATES.

25 Also so specified are the offices of Vice Judge Advocate General; Assistant Judge Advocate General; Deputy Judge Advocate; and Judge Advocate of Her Majesty's Fleet: Judicial Pensions and Retirement Act 1993 Sch 1 Pt II. As to the Judge Advocate General see PARA 801 post; and ARMED FORCES.

26 Ie in Scotland, the offices of Lord President of the Court of Session; Lord Justice Clerk; judge of the Court of Session; sheriff principal or sheriff; and in Northern Ireland, Lord Chief Justice of Northern Ireland; Lord Justice of Appeal; High Court judge; county court judge in Northern Ireland; resident magistrate; and any of the offices from time to time specified in the Judicature (Northern Ireland) Act 1978 Sch 3 col 1, other than Principal Secretary to the Lord Chief Justice, Legal Secretary to the Lord Chief Justice and Official Solicitor: Judicial Pensions and Retirement Act 1993 Sch 1 Pts I, II (as amended: see note 1 supra).

27 The offices so specified (not all of which are relevant to this title but which are listed here for convenient reference) are: Chief or other Social Security Commissioner (excluding appointments in pursuance of the Social Security Act 1998 Sch 4 para 1(2)), and the equivalent office in Northern Ireland; Chief or other Child Support Commissioner (excluding appointments in pursuance of the Child Support Act 1991 Sch 4 para 4), and the equivalent office in Northern Ireland; President of appeal tribunals (within the meaning of the Social Security Act 1998 Pt I Ch 1), appointed under s 5, and the equivalent office in Northern Ireland; President of the Employment Tribunals (England and Wales); President of the Employment Tribunals (Scotland); President or Vice-President of the Employment Tribunals and the Fair Employment Tribunal, appointed under the Fair Employment (Northern Ireland) Act 1989 s 3; Chairman of employment tribunals appointed in pursuance of regulations under the Employment Tribunals Act 1996 s 1(1); Chairman of industrial tribunals or of the Fair Employment Tribunal appointed in pursuance of regulations under the Industrial Tribunals (Northern Ireland) Order 1996, SI 1996/1921, art 3 or appointed under the Fair Employment (Northern Ireland) Act 1989 s 3(1)(c); President or other member of the Lands Tribunal, the Lands Tribunal for Scotland or the Lands Tribunal for Northern Ireland; President of the Competition Commission Appeal Tribunals; President or Vice-President of Value Added Tax Tribunals; Chairman of value added tax tribunals; Commissioner for the special purposes of the Income Tax Acts appointed under the Taxes Management Act 1970 s 4; President or other member of the Immigration Appeal Tribunal; President of the pensions appeal tribunals established under the Pensions Appeal Tribunals Act 1943; President or chairman of the Transport Tribunal; President or Deputy President of the Financial Services and Markets Tribunal; adjudicator for the purposes of the Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator); Member of a panel constituted under the Social Security Act 1998 s 6(1) who is appointed to serve full-time as a member of that panel and either has a general qualification (construed in accordance with the Courts and Legal Services Act 1990 s 71: see PARA 530 note 1 ante) or is an advocate or solicitor in Scotland; member of a panel constituted under the Social Security (Northern Ireland) Order 1998, SI 1998/1506, art 7(1) who is appointed to serve full-time as a member of that panel and is a barrister or solicitor; Chairman of the Criminal Injuries Compensation Board incorporated under the Criminal Justice Act 1988 s 108(1); Chairman of the Foreign Compensation Commission; Chairman of the Scottish Land Court; President of the Industrial Court appointed in pursuance of the Industrial Relations (Northern Ireland) Order 1992, SI 1992/807, art 91: Judicial Pensions and Retirement Act 1993 Sch 1 Pt II (as amended: see note 1 supra).

28 Ie as the 'appropriate minister' except in relation to judicial offices whose jurisdiction is exercised exclusively in Scotland: see *ibid* s 30(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

29 See PARA 535 note 2 ante.

30 Judicial Pensions and Retirement Act 1993 s 1(8). In the exercise of this power, the Lord Chancellor has made the Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 1999, SI 1999/1454, which came into force on 1 June 1999 (see art 1) and which amends the Judicial Pensions and Retirement Act 1993 Sch 1 Pt II (see note 2 supra).

In any case where an order under s 1(8) amends Sch 1 (as amended) by the addition of any office ('the office') to those for the time being specified therein, and immediately before the coming into force of the order, a local authority was under a liability to defray, whether in whole or in part, pensions or other benefits payable in respect of service in the office, the appropriate minister (ie the Lord Chancellor) may by order made with the consent of the Treasury provide for the local authority to be discharged, to such extent as may be prescribed, from the liability to pay pensions or other benefits in respect of such service in the office as may be prescribed;

and require the local authority instead to make prescribed payments to the Treasury: s 21(1). In framing the provisions of such an order regard must be had to the desirability of securing so far as reasonably practicable: (1) that the payments required to be made by the local authority are such as to reimburse the Treasury in respect of so much of any pension or lump sum payable under Pt I (as amended) or any sums payable by way of pension or lump sum under s 19 (see PARA 551 post), to or in respect of any person to whom Pt I (as amended) applies as may reasonably be regarded as attributable to his service in the office; and (2) that the local authority is discharged, to a corresponding extent, from the liability to pay any pension or other benefit to or in respect of such a person in respect of his service in the office: s 21(3). For these purposes, 'local authority' means any county council, county borough council, district council, London Borough Council or the Common Council of the City of London; and 'prescribed' means specified in, or determined in accordance with, an order under s 21(2): s 21(4) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 100). Nothing in the Judicial Pensions and Retirement Act 1993 s 21 (as so amended) applies in relation to any pension or other benefits payable under or by virtue of s 10 (additional voluntary contributions: see PARA 549 post); and s 21 (as so amended) is without prejudice to the generality of s 29 (exercise of power to make orders etc: see PARA 535 note 2 ante): s 21(5), (6). Any sums received by the Treasury under s 21 (as so amended) must be paid into the Consolidated Fund: s 28(6).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

539 Qualifying judicial office

NOTE 1--1993 Act Sch 1 Pt I further amended: Constitutional Reform Act 2005 s 37(2), (3), Sch 4 para 229 (s 37(2), (3) in force 1 October 2009: SI 2009/1604). 1993 Act Sch 1 Pt II further amended: Nationality, Immigration and Asylum Act 2002 Sch 7 para 18; Pensions Act 2004 Sch 4 para 17(2); Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 8(1); Mental Capacity Act 2005 Sch 6 para 38(2); Armed Forces Act 2006 Sch 17; Judicial Pensions (Pensions Appeal Tribunals) Order 2002, SI 2002/1347; Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2003, SI 2003/1311; Judicial Pensions and Retirement Act 1993 (Qualifying Judicial Offices) (Amendment) Order 2003, SI 2003/2775; Enterprise Act 2002 (Judicial Pensions and Retirement Act 1993) (Consequential Amendment) Order 2005, SI 2005/53; Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2006, SI 2006/391; Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2007, SI 2007/675 (amended by SI 2009/1834); Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) (No 2) Order 2007, SI 2007/2185; Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2008, SI 2008/171; Transfer of Tribunal Functions Order 2008, SI 2008/2833; Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) (No 2) Order 2008, SI 2008/2947; and Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) (No 3) Order 2008, SI 2008/3139.

1993 Act Sch 1 Pt II further amended: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307.

NOTE 10--Reference to remuneration in 1964 Act s 7 omitted: s 7 (amended by Statute Law (Repeals) Act 2004).

NOTE 20--1999 Act s 70 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 21--Reference to a master of the Court of Protection omitted except in the case of a person holding that office immediately before the commencement of the Mental Capacity Act 2005 Sch 6 para 38(2) (ie 1 October 2007: SI 2007/1897) or who had previously retired from that office or died: 1993 Act Sch 1 Pt II (amended by Mental Capacity Act 2005 Sch 6 para 38(2)).

NOTE 26--Words 'other than ... Official Solicitor' omitted: 1993 Act Sch 1 Pt II (amended by Courts Act 2003 Sch 10).

NOTE 27--Reference to Chief or other Social Security Commissioner; Immigration and Asylum Act 1999 (other than Asylum Support Adjudicator) is now to Nationality, Immigration and Asylum Act 2002 Pt 5 (ss 81-117); the requirement that a member of a panel constituted under the Social Security Act 1998 s 6(1) or the Social Security (Northern Ireland) Order 1998 art 7(1) hold a legal qualification in order to qualify as a judicial office holder for the purposes of the 1993 Act Pt 1 is removed: 1993 Act Sch 1 Pt II (as amended: see NOTE 1).

Further offices specified are deputy president of the pensions appeal tribunals established under the Pensions Appeal Tribunals Act 1943; adjudicator to the Land Registry; chairman of the mental health review tribunal for Wales; president of the mental health review tribunal for Wales; president of the Competition Appeal Tribunal; president of the Valuation Tribunal for England appointed under the Local Government Finance Act 1988 Sch 11 para A7(1); and persons authorised by the Adjudicator to Her Majesty's Land Registry in accordance with the Land Registration Act 2002 Sch 9 para 4 to carry out functions which are not of an administrative character: 1993 Act Sch 1 Pt II (as amended).

TEXT AND NOTE 30--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993/(A) Application of the 1993 Legislation/540. Election that 1993 legislation is to apply.

540. Election that 1993 legislation is to apply.

Any person holding qualifying judicial office¹ on 31 March 1995² and who held such office at any time before that day is entitled, in such circumstances as may be prescribed³, to make an election for Part I of the Judicial Pensions and Retirement Act 1993⁴ to apply to him, if it would not otherwise do so⁵. Any such election must be made within such time and in such manner as may be prescribed⁶ and is irrevocable⁷.

No such election may be made at any time when an election for a personal pension instead of a judicial pension⁸ is in force in relation to the person in question⁹.

An office-holder to whom the above provisions apply may make an election if no payment of pension or other benefit has been made under a judicial pension scheme in respect of service in his last qualifying judicial office¹⁰; but he may not do so later than six months after the date on which he ceases to hold qualifying judicial office¹¹. If the office-holder had not made an election before his death, his personal representative may make an election¹² not later than six

months after the date on which the deceased office-holder ceased to hold qualifying judicial office, or, if later, three months after the date of grant of probate or letters of administration¹³.

An office-holder makes an election by notifying the Lord Chancellor in writing of his wish that Part I of the Judicial Pensions and Retirement Act 1993 should apply to him and of the date on which he wishes the election to take effect¹⁴; and a personal representative makes an election by notifying the Lord Chancellor in writing of his wish that that Part should apply to the deceased office-holder¹⁵.

An election made by an office-holder while he holds qualifying judicial office takes effect no earlier than the date on which the office-holder makes the election and no later than the date on which he ceases to hold qualifying judicial office¹⁶; and, subject to this, takes effect on the date that the office-holder makes the election or, if later, the date the office-holder specifies¹⁷ as the date he wishes the election to take effect¹⁸. An election made by an office-holder after he has ceased to hold qualifying judicial office takes effect as from his ceasing to hold such office¹⁹.

Where a personal representative makes an election in respect of an office-holder who died whilst holding qualifying judicial office or after having retired from such office with a pension immediately payable, then, for the purposes of the Judicial Pensions and Retirement Act 1993, Part I of that Act is treated as applying to the deceased office-holder (1) where he died before ceasing to hold qualifying judicial office, as from the date of death; or (2) where he died after retirement, as from his retirement from qualifying judicial office²⁰.

1 As to qualifying judicial offices see PARA 539 ante.

2 I.e. the appointed day for the commencement of the Judicial Pensions and Retirement Act 1993: see PARA 535 note 5 ante.

3 For these purposes, 'prescribed' means prescribed in regulations made by the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 ante): *ibid* s 1(9). See notes 6, 8-21 *infra*. As to the making of regulations see s 29; and PARA 535 note 2 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*.

4 I.e. *ibid* Pt I (ss 1-18) (as amended): see PARAS 538-539 ante; the text and notes 5-9 *infra*; and PARA 541 *et seq post*.

5 *Ibid* s 1(2).

6 The circumstances that may be prescribed, and the time that may be prescribed, include circumstances or times which permit the making of an election notwithstanding that the person in question has retired from qualifying judicial office or has died; and, without prejudice to *ibid* s 29(3), (4) (see PARA 535 note 2 ante), where any such circumstances or times are so prescribed: (1) the person in question is to be treated for such purposes as may be prescribed as if he had, at such times as may be prescribed, been a person to whom Pt I (as amended) applies; and (2) any right to make an election notwithstanding the person's death is exercisable by his personal representatives: s 1(4).

7 *Ibid* s 1(3).

8 I.e. an election under *ibid* s 13 (as amended): see PARA 541 *post*.

9 *Ibid* s 1(5).

10 Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 4A (added by SI 1997/1687).

11 Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 5(1) (reg 5 substituted by SI 1996/2893). The date on which a person makes an election is the date on which the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 ante) receives his notification given in accordance with the Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 4 (as substituted) (see the text and notes 14-15 *infra*): reg 5(6) (as so substituted).

12 *Ibid* reg 4B(1) (reg 4B added by SI 1997/1687). Where the office-holder died in service, a personal representative may make an election only if (1) no payment of surviving spouse's pension has been made

under a judicial pension scheme in respect of the service in the last qualifying judicial office held by the deceased office-holder; or (2) the amount of surviving spouse's pension which is being paid under such a scheme does not exceed the amount of pension to which the surviving spouse would have been entitled if the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended) had applied to the deceased office-holder from the date of death or, where this is not the case, the following condition is satisfied, ie that the surviving spouse had agreed, in respect of the period prior to the making of an election, to accept an amount on account of the pension which he is eligible to receive under an existing scheme which does not exceed the amount of pension to which he would be entitled if Pt I (as amended) had applied to the deceased office-holder from the date of death: Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 4B(2), (3) (as so added). Where the office-holder died after ceasing to hold qualifying judicial office, a personal representative may make an election only if the office-holder died within six months of ceasing to hold qualifying judicial office and the office-holder had not received any payment of pension or other benefit under a judicial pension scheme in respect of the service in the last qualifying judicial office held by the office-holder: reg 4B(4) (as so added).

13 Ibid reg 5(3) (as substituted: see note 11 supra).

14 Ibid reg 4(1) (reg 4 substituted by SI 1996/2893). A notice so given must be signed and dated by the office-holder and must contain his full name and either his current qualifying judicial office or, where he has ceased to hold qualifying judicial office, his last qualifying judicial office: Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 4(3) (as so substituted).

15 Ibid reg 4(2) (as substituted: see note 14 supra). A notice so given must be signed and dated by the personal representative, and must give the full name of the deceased office-holder and his qualifying judicial office at the date of death or at the date he ceased to hold qualifying judicial office: reg 4(4) (as so substituted). A personal representative must supply with the notice of election evidence of his entitlement to act as personal representative: reg 4(5) (as so substituted).

16 Ibid reg 6(1) (reg 6 substituted by SI 1996/2893).

17 Ie in accordance with the Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 4(1) (as substituted: see note 14 supra).

18 Ibid reg 6(2) (as substituted: see note 16 supra).

19 Ibid reg 6(3) (as substituted: see note 16 supra).

20 Ibid reg 6(4) (as substituted (see note 16 supra); amended by SI 1997/1687). Where a personal representative makes an election in respect of a person who died after ceasing to hold qualifying judicial office and who left such office without a pension becoming immediately payable, the provisions of the Judicial Pensions (Preservation of Benefits) Order 1995, SI 1995/634 (see PARA 543 note 3 post) or the equivalent Northern Ireland provisions are treated as applying to the deceased office-holder as from his ceasing to hold such office: Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 6(5) (as so substituted).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

540 Election that 1993 legislation is to apply

TEXT AND NOTE 12--SI 1995/632 reg 4B amended: SI 2005/3325.

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541. Election for personal pension instead of judicial pension.

A person to whom Part I of the Judicial Pensions and Retirement Act 1993¹ applies², or to whom it would apply apart from the following provisions, may be a member of a personal pension scheme³ while holding qualifying judicial office⁴ if and only if he serves on the Lord Chancellor⁵ a written notice of election, which must identify the personal pension scheme in question and be expressed to take effect on a date not less than three months after service of the notice⁶. Where a person makes such an election, he is not to be regarded as a person to whom that Part applies at any time when the election is in force⁷. An election so made by a person does not affect any rights of his which accrued under that Part before the election comes into force⁸.

An election made by a person under these provisions is irrevocable⁹, except that where such an election is in force and the person who made it continues to hold qualifying judicial office, he may make a written application to the Lord Chancellor requesting that he should once again become a person to whom Part I of the 1993 Act applies¹⁰. He must provide such evidence relating to his health and submit to any such medical examination as may be reasonably required by the Lord Chancellor¹¹. If, on such an application, the Lord Chancellor is satisfied that the applicant is in good health, he may direct that that Part shall once again apply to the applicant with effect from a date (his 'date of readmission') not less than three months after service of the application¹². He must give written notice of his decision on such an application to the applicant not later than three months after service of the application¹³. A person's election ceases to be in force on his date of readmission¹⁴.

1 I.e. the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante, para 542 et seq post.

2 As to persons to whom *ibid* Pt I (as amended) applies see PARA 538 ante.

3 For these purposes, 'personal pension scheme' means a scheme in respect of which there is in force a current appropriate scheme certificate issued in accordance with the Pension Schemes Act 1993 s 7 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 880) or, in the case of qualifying judicial office held in Northern Ireland, in accordance with the Pension Schemes (Northern Ireland) Act 1993 s 3: Judicial Pensions and Retirement Act 1993 s 13(9) (definition amended by the Pensions Act 1995 ss 151, 177, Sch 5 para 17, Sch 7 Pt III; the Pension Schemes Act 1993 s 190, Sch 8 para 46(2); and the Pension Schemes (Northern Ireland) Act 1993 s 184, Sch 7; and by the Pensions (Northern Ireland) Order 1995, SI 1995/3213, art 165, Sch 4 para 1).

4 As to persons holding qualifying judicial office see PARA 539 ante.

5 I.e. the appropriate minister: see PARA 535 note 2 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Judicial Pensions and Retirement Act 1993 s 13(1).

7 *Ibid* s 13(1), which is expressed to be in accordance with s 1(5): see PARA 538 ante.

8 *Ibid* s 13(2)(b). In accordance with s 2(7)(b)(iii) (see PARA 543 post), any service of his in qualifying judicial office while the election is in force is left out of account in determining the length of his service in such office for the purposes of Pt I (as amended): s 13(2).

Where an election (whenever made) under any of the corresponding provisions is in force in respect of a person on the relevant day: (1) the election has effect for these purposes, and continues in force, as if made under s 13 (as amended); and (2) if and so long as the election remains in force, the person is precluded from making an election under s 1(2) (see PARA 540 ante); but if on an application under s 13(3) (see the text and note 10 *infra*) in relation to the election, the appropriate minister directs that Pt I (as amended) shall apply to that person, the election ceases, in accordance with s 13(5) (see the text and note 14 *infra*), to be in force for these purposes

(as well as for those of the Act or instrument containing the corresponding provision), heads (1)-(2) supra cease to have effect in relation to it, and the application has effect as the applicant's election under s 1(2): s 13(8). For these purposes, 'the corresponding provisions' means the Judicial Pensions Act 1981 s 14A(3) (as added) (see PARA 561 post); the County Courts Act (Northern Ireland) 1959 s 116A(3) (as added); the Resident Magistrates' Pensions Act (Northern Ireland) 1960 s 2A(3) (as added); the Lands Tribunal and Compensation Act (Northern Ireland) 1964 s 2A(3) (as added); the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969 s 2A(1) (as added); the Social Security (Northern Ireland) Act 1975 Sch 10 para 7A(3) (as added); and, in the case of any other judicial pension scheme, any provision of that scheme which confers a right to elect for a pension under a personal pension scheme; and 'the relevant day', in the case of any person, means the day on which the Judicial Pensions and Retirement Act 1993 Pt I (as amended) applies, or would, apart from any election under s 13 (as amended) or the corresponding provisions, first apply to him: s 13(9).

9 Ibid s 13(2)(a).

10 Ibid s 13(3).

11 Ibid s 13(6).

12 Ibid s 13(4).

13 Ibid s 13(7).

14 Ibid s 13(5).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

541 Election for personal pension instead of judicial pension

TEXT AND NOTES--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTES 1-6--1993 Act s 13(1) now s 13(1)-13(1B) (substituted by the Judicial Pensions (Election against Benefits) Regulations 2003, SI 2003/2916). Such a person may now at any time serve on the appropriate minister a written notice of election that the 1993 Act Pt I should not apply to him: s 13(1) (as so substituted). An election so made takes effect on the date specified in the notice which must be not less than one month after service of the notice: s 13(1B)(a) (s 13(1B) as so substituted). A person appointed to a qualifying judicial office may, at any time before beginning to serve in that office, serve on the appropriate minister a written notice of election that Pt I should not apply to him: s 13(1A) (as so substituted). An election so made takes effect when the person appointed begins to serve in that office: s 13(1B)(b) (s 13(1B) as so substituted).

NOTE 3--Definition of 'personal pension scheme' omitted: 1993 Act s 13(9) (amended by SI 2003/2916).

NOTE 8--In the definition of 'the corresponding provisions' for 'confers a right ... scheme read 'confers a right on a person to elect that the 1993 Act Pt I is not to apply to him': s 13(9) (definition amended by SI 2003/2916).

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542. Application of 1993 legislation to holders of office of Lord Chancellor.

Not more than one pension may be paid¹ to a person to whom Part I of the Judicial Pensions and Retirement Act 1993² applies³ who has also held the office of Lord Chancellor⁴. In determining the appropriate annual rate of a pension payable⁵ to such a person who either was holding the office of Lord Chancellor immediately before 31 March 1995⁶ or who first held that office on or after that day, the length of his service in qualifying judicial office⁷ is to be treated as increased by the aggregate length of his periods of service in the office of Lord Chancellor (excluding any day of service in that office which is also a day of service in qualifying judicial office)⁸.

Where a pension under the Lord Chancellor's Pension Act 1832 is, or would, but for his death, have been, paid to such a person, so that no derivative benefits⁹ are payable to or in respect of him under the Judicial Pensions and Retirement Act 1993, Part II of the Judicial Pensions Act 1981¹⁰ continues to have effect with respect to the derivative benefits¹¹ which are payable to or in respect of him by virtue of his service in the office of Lord Chancellor¹².

1 Ie under the Judicial Pensions and Retirement Act 1993 s 2 (see PARA 543 post) and the Lord Chancellor's Pension Act 1832 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 479): Judicial Pensions and Retirement Act 1993 s 14(1).

2 Ie ibid Pt I (ss 1-18) (as amended): see PARA 538 et seq ante, para 543 et seq post.

3 As to persons to whom ibid Pt I (as amended) applies see PARA 538 ante.

4 Ibid s 14(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Ie under ibid s 2: see PARA 543 post.

6 Ie the appointed day: see PARA 535 note 5 ante.

7 As to persons holding qualifying judicial office see PARA 539 ante.

8 Judicial Pensions and Retirement Act 1993 s 14(2).

9 As to derivative benefits see PARAS 545-548 post.

10 Ie the Judicial Pensions Act 1981 Pt II (ss 16-29) (as amended): see PARA 562 et seq post.

11 For the meaning of 'derivative benefits' for these purposes see ibid s 16 (as amended); and PARA 562 post.

12 Judicial Pensions and Retirement Act 1993 s 14(3). Except as provided by s 14(3), no pension or other benefit may be paid under the Judicial Pensions Act 1981 Pt II (as amended) to or in respect of a person to whom the Judicial Pensions and Retirement Act 1993 Pt I (as amended) applies: s 14(4).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993/(B) Pensions for Judicial Officers/543. Judicial officer's entitlement to a pension.

(B) PENSIONS FOR JUDICIAL OFFICERS

543. Judicial officer's entitlement to a pension.

Any person to whom Part I of the Judicial Pensions and Retirement Act 1993¹ applies² who retires from qualifying judicial office³ on or after the day on which he attains the age of 65 years and who has, at the time of that retirement, completed, in the aggregate, at least five years' service⁴ in qualifying judicial office, is entitled during his life to a pension at the appropriate annual rate⁵.

Any person to whom Part I of the 1993 Act applies who retires from qualifying judicial office on or after the day on which he attains the age of 60 years, but before attaining the age of 65 years, and who has, at the time of that retirement, completed, in the aggregate, at least five years' service in qualifying judicial office, is entitled during his life to a pension at the appropriate annual rate, actuarially reduced⁶.

In any case where a person to whom Part I of the 1993 Act applies retires from qualifying judicial office before he has attained the age of 65 years or before he has completed, in the aggregate, at least five years' service in such office, and the Lord Chancellor is satisfied by means of a medical certificate that, by reason of infirmity of mind or body, the person is incapable of discharging the duties of his qualifying judicial office and that the incapacity is likely to be permanent, the person is entitled during his life to a pension at the appropriate annual rate⁷.

Where a person to whom Part I of the 1993 Act applies is removed from a qualifying judicial office, his removal from that office is to be treated for these purposes as his retirement from qualifying judicial office⁸. If he has not attained the age of 60 years at the date of that retirement, and the Lord Chancellor recommends that his accrued rights under that Part should be given immediate effect, then the person is entitled during his life to a pension at the appropriate annual rate, actuarially reduced⁹.

Where a person to whom a pension under these provisions has commenced to be paid resumes service in qualifying judicial office, the resumption of service does not affect his entitlement to payment of the pension for any period before the resumption but he is not entitled to payment of the pension for any period during the resumed service¹⁰. At the end of the period of resumed service his entitlement (and that of any other person) to a pension or other benefit under Part I of the 1993 Act, and the rate or amount of any such pension or other benefit, must be determined¹¹ as if no pension had previously commenced to be paid to him¹².

A pension under these provisions (a 'judicial pension')¹³ is payable at such intervals, not exceeding three months, as the Treasury may determine¹⁴.

1 le the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante, para 544 et seq post.

2 As to persons to whom *ibid* Pt I (as amended) applies see PARA 538 ante.

3 As to persons holding qualifying judicial office see PARA 539 ante. An office holder who has completed two years of relevant service, but who ceases to hold qualifying judicial office before normal pension age, is eligible for a pension when he reaches normal pension age: see the Judicial Pensions (Preservation of Benefits) Order 1995, SI 1995/634, art 5 (the whole Order revoked in relation to Northern Ireland). The Judicial Pensions and Retirement Act 1993 ss 4(1), 5(1)-(4) and 6-9 (except s 8(4)) (see PARAS 545-548 post) apply in relation to an office holder whose pension has been preserved by virtue of the 1995 Order, including, where appropriate, any officer who dies before payment of the preserved pension, as they apply in relation to an office holder who becomes entitled to a pension on retirement at normal pension age or who dies in service: Judicial Pensions (Preservation of Benefits) Order 1995, SI 1995/634, art 6(1). An office holder is treated as not ceasing to hold office for these purposes where: (1) he moves from one qualifying judicial office to another; or (2) at the time that he ceases to hold qualifying judicial office he is entitled to a pension under the Judicial Pensions and Retirement Act 1993 s 2(2), (3) or (4) (see the text and notes 6-9 *infra*); or (3) he holds qualifying judicial office on the last day of service but has made no election under s 1(2) (see PARA 538 ante) for Pt I (as amended) to apply to him: Judicial Pensions (Preservation of Benefits) Order 1995, SI 1995/634, art 4. Any assignment (or, in Scotland, assignation) of, or charge on, or any agreement to assign or charge, any pension or lump sum which may be granted by virtue of the 1995 Order (unless made by an office-holder in favour of his surviving spouse or eligible children as defined by the Judicial Pensions and Retirement Act 1993 s 6 (see PARA 547 post)) is void: Judicial Pensions (Preservation of Benefits) Order 1995, SI 1995/634, art 7.

4 For these purposes, in determining the length of a person's period of service in any qualifying judicial office, it is immaterial whether he works full-time or part-time, but if he holds two or more qualifying judicial offices concurrently, no day shall be counted more than once: Judicial Pensions and Retirement Act 1993 s 2(7) (a). In determining the length of a person's period of service in any qualifying judicial office, there must be left out of account: (1) any service in such office before the day on which Pt I (as amended) first applied to him (except to the extent to which it is given effect under or by virtue of s 12 (transfer of rights: see PARA 538 ante); (2) in the case of an office which becomes a qualifying judicial office by virtue of an order under s 1(8) (see PARA 539 ante), any service in that office before the day on which it becomes such an office (except to the extent to which it is given effect under or by virtue of s 12); (3) any service in qualifying judicial office at a time when an election under s 13 (see PARA 541 ante) is in force in respect of him; and (4) any service in such office in respect of which he has taken a cash equivalent in accordance with s 23, Sch 2 para 6 (see PARA 552 post): s 2(7)(b).

5 *Ibid* s 2(1).

6 *Ibid* s 2(2). As to the appropriate annual rate see s 3; and PARA 544 post. 'Actuarially reduced', in relation to the rate of a pension, means reduced by such amount as may be prescribed in, or determined in accordance with, regulations made under s 2 by the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 ante) with the concurrence of the Treasury: s 2(7)(e). See the Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 7. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Judicial Pensions and Retirement Act 1993 s 2(3). Section 2(2) (see the text and note 6 *supra*) does not have effect in relation to that retirement, notwithstanding that the conditions set out in s 2(2)(a), (b) may be satisfied in the particular case: s 2(3). In any case falling within s 2(3) where, at the date of the retirement, the person has not attained the age of 65 years, the aggregate length of his period of service is to be increased by the addition of a period equal in length to one half of that which begins immediately after the date of the retirement and ends with the day on which he would attain the age of 65 years: s 2(7)(c).

8 *Ibid* s 2(4). Where a person ceases to hold qualifying judicial office in consequence of infirmity of mind or body, the cessation (however brought about) is to be taken for these purposes to constitute retirement, not removal, from such office: s 2(7)(f).

9 *Ibid* s 2(4).

10 *Ibid* s 2(5)(a), (b).

11 le subject to *ibid* s 4(4) (lump sum payments: see PARA 545 post).

12 *Ibid* s 2(5)(c).

13 *Ibid* s 2(8).

14 Ibid s 2(6). Where any payment in respect of a pension under s 2 has become due, the pension is treated as commencing to be paid, notwithstanding that no payment has in fact been made in respect of it, and for this purpose a payment in respect of a pension is treated as becoming due on the first day of the period for which it is payable: s 2(7)(d).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

543 Judicial officer's entitlement to a pension

TEXT AND NOTES--See further 1993 Act s 2(3A), (9), (10) (added by Constitutional Reform Act 2005 Sch 4 para 227). See also s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

NOTE 3--SI 1995/634 art 7 amended: SI 2005/3325.

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544. The appropriate annual rate.

In the case of a person who has, at the time of his retirement from qualifying judicial office¹, completed, in the aggregate, at least 20 years' service in such office, the appropriate annual rate for the purposes of the Judicial Pensions and Retirement Act 1993 is an annual rate equal to one-half of his pensionable pay². In the case of a person not falling within the above provision, the appropriate annual rate for those purposes is an amount equal to one-fortieth of his pensionable pay, multiplied by the aggregate length of his service in qualifying judicial office (expressed in years and fractions of a year)³.

A person's pensionable pay is the greater of the following amounts, that is to say:

- 108 (1) the pension-capped salary⁴ payable to him in respect of his service in qualifying judicial office in the period of 12 months ending with the day on which⁵ his participation in the scheme constituted by Part I of the 1993 Act ceases⁶; and
- 109 (2) the greatest amount of pension-capped salary payable to him in respect of such service in any other period of 12 consecutive months falling within the period of three years ending with that day⁷.

This is subject to regulations⁸ which may make provision for any case where a person to whom Part I of the 1993 Act applies⁹ serves in judicial office neither throughout the whole of the period of 12 months mentioned in head (1) above nor throughout any other such period of 12

consecutive months as is mentioned in head (2) above¹⁰. Regulations may also make provision for any case where the service in qualifying judicial office of a person to whom Part I of the 1993 Act applies is, or has at some time been, only part-time, within the meaning of the regulations; and any such regulations may, in particular, provide for the amount of salary by reference to which his pension-capped salary (and accordingly his pensionable pay) would otherwise fall to be determined to be reduced, for the purpose of making any such determination, in accordance with the regulations¹¹.

Where a person's earnings exceed the pension-capped salary, the pension and lump sum¹² based on the pension-capped salary is not the full extent of that person's pension provision. Instead, the person is entitled under another statutory provision¹³ to a further pension and lump sum on the excess, but with different tax consequences¹⁴.

1 As to persons holding qualifying judicial office see PARA 539 ante.

2 Judicial Pensions and Retirement Act 1993 s 3(1).

3 Ibid s 3(2).

4 For these purposes, a person's 'pension-capped salary' for any period of 12 months is so much of his aggregate salary in respect of service in qualifying judicial office in that period as, within the meaning of the Income and Corporation Taxes Act 1988 s 590C(1) (as added) (earnings cap) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 750), does not exceed the permitted maximum for the year of assessment in which his participation in the scheme constituted by the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended) ceases: s 3(3)(b). A person's salary in respect of service in any qualifying judicial office is taken to accrue due from day to day, at the rate for the time being in force, throughout the period for which he holds the office: s 3(3)(c).

5 Ie within the meaning of the Income and Corporation Taxes Act 1988 s 590C(1) (as added) (earnings cap): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 750.

6 Judicial Pensions and Retirement Act 1993 s 3(3)(a)(i); and see the text and notes 8-10 infra.

7 Ibid s 3(3)(a)(ii); and see the text and notes 8-10 infra. If, in consequence of periods of ill-health, the rate at which a person's salary in respect of service in any qualifying judicial office is payable to him for any period falling within the three years mentioned in s 3(3)(a)(ii) is less than it would have been apart from the periods of ill-health, he is to be treated as if that salary had been payable to him throughout that period at the rate at which it would have been payable, apart from the periods of ill-health: s 3(3)(d).

In determining a person's salary in respect of his service in qualifying judicial office, there must be left out of account any part of the salary which is paid on terms which preclude rights to pensions and other benefits accruing by reference to it: s 3(3)(e).

8 For these purposes, 'regulations' means regulations made by the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 ante) with the concurrence of the Treasury: ibid s 3(6). As to the making of such regulations see PARA 535 note 2 ante. In the exercise of this power, the Lord Chancellor has made the Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632 (as amended): see notes 10-11 infra. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

9 As to persons to whom the Judicial Pensions and Retirement Act 1993 Pt I (as amended) applies see PARA 538 ante.

10 Ibid s 3(4). Any such regulations may, in particular, provide for such a person's pensionable pay and pension-capped salary to be determined for the purposes of the Judicial Pensions and Retirement Act 1993 as if he had served in his qualifying judicial office (whether full-time or part-time) throughout the whole of the period of 12 months mentioned in head (1) in the text and had been paid in respect of that service a salary of an amount determined by reference to the annual rate of salary payable in his case in respect of service in that office in that period: s 3(4). For the purposes of calculating a person's pensionable pay and pension-capped salary where the circumstances mentioned in s 3(4) apply, he is to be treated as if he had served in his qualifying judicial office (whether full-time or part-time) for a period of 12 consecutive months ending with the day on which he ceased to participate in the scheme constituted by Pt I (as amended) ('the notional period'); and for these purposes a person's qualifying judicial office is taken to be that which he was holding on the day his participation in the scheme ceased: Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, reg 8(1), (2). A person's salary in respect of service in any qualifying judicial office referred to in reg 8(2) is to be taken to be a salary of an amount determined by reference to the annual rate of salary payable in his case in

respect of service in that office during the notional period; but in any case where that qualifying judicial office comes into being on a date after the first day of the notional period that office is treated as if it had existed throughout the notional period and, for the purposes of such calculation, the rate of the person's salary for the part of the notional period before the date on which that office came into being is to be taken to be the rate that was in force on that date and the rate of the person's salary for the remainder of the notional period is to be the rate actually payable in respect of service in that office: reg 8(3), (4).

11 Judicial Pensions and Retirement Act 1993 s 3(5). For the purpose of determining a person's pensionable pay in any case where the service in qualifying judicial office of a person to whom Pt I (as amended) applies is, or has at some time included, part-time service (defined as continuous service consisting of at least one day's service a week in qualifying judicial office on a salaried basis within the meaning of s 1(7) (see PARA 539 ante)), such pensionable must be calculated in accordance with a prescribed formula: see the Judicial Pensions (Miscellaneous) Regulations 1995, SI 1995/632, regs 9-11. For the purposes of the calculation, all periods of service must be expressed in years or fractions of a year as appropriate: see reg 11(2).

12 As to payment of a lump sum see PARA 545 post.

13 le under the Judicial Pensions and Retirement Act 1993 s 19: see PARA 551 post.

14 See PARA 551 post.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

544 The appropriate annual rate

NOTES 4-6--Judicial Pensions and Retirement Act 1993 s 3(3)(a)(i), (b) amended, s 3(3A)-(3E) added: SI 2006/497.

NOTE 8--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

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(C) DERIVATIVE BENEFITS

545. Lump sum on judicial officer's retirement or death.

Where a judicial pension¹ commences to be paid to a person, there must also be paid to him a lump sum of an amount equal to two and one-quarter times the annual rate of the pension². A person to whom a lump sum is so paid but who resumes service in qualifying judicial office³ is not required to refund the lump sum; but if the whole or any part of it is not refunded, an

amount equal to so much of it as has not been refunded must be deducted from any lump sum which subsequently becomes payable⁴ to or in respect of him⁵.

Where a judicial pension commences to be paid to a person, but he dies so soon thereafter that the aggregate of the sums paid or payable to him on account of that pension, including any increases under the Pensions (Increase) Act 1971⁶, and the lump sum paid or payable to him under the above provision, falls short of an amount equal to five times the annual rate in force in respect of that pension immediately before his death, including any increases under the Pensions (Increase) Act 1971, his personal representatives must be granted a lump sum equal to the deficiency⁷.

Where a person to whom Part I of the Judicial Pensions and Retirement Act 1993⁸ applies⁹ dies while holding qualifying judicial office, a lump sum of an amount equal to twice the amount of his pensionable pay¹⁰ is payable to the person (if any) nominated by him for these purposes by notice in writing to the administrators of the scheme¹¹ constituted by that Part or, in default of any such nomination, to his personal representatives¹².

1 For the meaning of 'judicial pension' see PARA 543 the text and note 13 ante.

2 Judicial Pensions and Retirement Act 1993 s 4(1). In making any calculation for the purposes of ss 4-8, any abatement of a pension falling to be made under any order made under the Pension Schemes Act 1993 s 141 or s 143 (both repealed) (modification or winding up of public service schemes) or the corresponding repealed Northern Ireland provision is to be left out of account: Judicial Pensions and Retirement Act 1993 s 16 (amended by the Pension Schemes Act 1993 s 190, Sch 8 para 46(3); and by the Pension Schemes (Northern Ireland) Act 1993 s 184, Sch 7).

3 As to persons holding qualifying judicial office see PARA 539 ante.

4 Ie under the Judicial Pensions and Retirement Act 1993 s 4(1), (2) or (3): see the text and notes 1-2 supra, 5-12 infra.

5 Ibid s 4(4).

6 As to the Pensions (Increase) Act 1971 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 615-616.

7 Judicial Pensions and Retirement Act 1993 s 4(2).

8 Ie ibid Pt I (ss 1-18) (as amended): see PARA 538 et seq ante, 545 et seq post.

9 As to persons to whom ibid Pt I (as amended) applies see PARA 538 ante.

10 In determining a person's pensionable pay for these purposes, his death is to be treated as his retirement from qualifying judicial office: ibid s 4(3).

11 'Administrators', in relation to a pension scheme, means the persons entrusted with the administration of the scheme: ibid s 30(1).

12 Ibid s 4(3).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993/(C) Derivative Benefits/546. Surviving spouse's pension.

546. Surviving spouse's pension.

In any case where a person ('the deceased') to whom Part I of the Judicial Pensions and Retirement Act 1993¹ applies² dies leaving a surviving spouse and their marriage took place before the deceased retired from qualifying judicial office³, the surviving spouse is entitled to a pension for life (a 'surviving spouse's pension') in respect of the deceased's service in such office, at an annual rate equal to one-half of the annual rate of the deceased's judicial pension⁴. A pension under these provisions is payable at such intervals, not exceeding three months, as the Treasury may determine⁵.

If the surviving spouse remarries, the Treasury may, on or at any time after the remarriage, direct that the pension shall cease to be payable⁶ and may, where such a direction has been given, at any time direct that payment of the pension is to be resumed⁷.

Where a marriage which is voidable, but not void from the beginning, is declared null by any court, the same results follow under Part I of the 1993 Act as would have followed if the marriage had not been voidable but had been dissolved at the date of the declaration of nullity⁸.

1 Ie the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante, para 547 et seq post.

2 As to the persons to whom *ibid* Pt I (as amended) applies see PARA 538 ante.

3 Where the deceased died while holding qualifying judicial office, his death is to be treated for these purposes as his retirement from such office: *ibid* s 5(5). As to persons holding qualifying judicial office see PARA 539 ante.

4 *Ibid* s 5(1). For these purposes, 'the annual rate of the deceased's judicial pension' means: (1) where a judicial pension under s 2(1) or (3) had commenced to be paid to the deceased, the appropriate annual rate of that pension; (2) where a judicial pension under s 2(2) or (4) had commenced to be paid to the deceased, the appropriate annual rate of that pension, as actuarially reduced under s 2; (3) where no judicial pension had commenced to be paid to the deceased, the rate that would have been the appropriate annual rate of his judicial pension under s 2(3) had he not died, but retired from qualifying judicial office on the date of death; and had the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 ante) been satisfied in his case as mentioned in s 2(3)(b): s 5(6); and see further PARAS 543-544 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 *Ibid* s 5(2).

6 *Ibid* s 5(3).

7 *Ibid* s 5(4).

8 *Ibid* s 17. As to annulment, and the distinction between void and voidable marriages, see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 320; and as to the consequences of divorce on a spouse's entitlement to a pension see MATRIMONIAL AND CIVIL PARTNERSHIP LAW; SOCIAL SECURITY AND PENSIONS.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

546 Surviving spouse's [and surviving civil partner's] pension

TEXT AND NOTES 1-7--1993 Act s 5 amended: SI 2005/3325. See also 1993 Act Sch 1A (added by SI 2005/3325) (transitional provision in relation to surviving civil partners' pensions).

TEXT AND NOTE 8--1993 Act s 17 substituted: SI 2005/3325.

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547. Children's pension.

Upon the death of a person to whom Part I of the Judicial Pensions and Retirement Act 1993¹ applies² ('the deceased'), a pension in respect of his service in qualifying judicial office³ must be granted for the benefit of such persons as may from time to time be the eligible children of the deceased (a 'children's pension')⁴. The persons who are the eligible children of the deceased at any time are (1) any natural children⁵ of the deceased; (2) any step-children⁶ of the deceased; (3) any children adopted by the deceased before his retirement⁷ from qualifying judicial office; and (4) any children adopted by the deceased after his retirement from qualifying judicial office and in respect of whom a direction is given⁸ by the Treasury, who are for the time being in their period of childhood and full-time education⁹.

Only one children's pension may be granted in respect of the service of any one person, but the rate of the pension varies¹⁰ according to the number of his eligible children for the time being¹¹. The pension must be paid to such person or persons as the Treasury may from time to time direct, and different parts of the pension may be directed to be paid to different persons¹². The person to whom all or any part of the pension is paid must apply the sum paid to him, without distinction, for the benefit of all the persons who are for the time being eligible children of the deceased or, as the case may be, for the benefit of such of them as the Treasury may from time to time direct¹³.

A children's pension must be paid so long as and whenever there are eligible children of the deceased and is payable at such intervals, not exceeding three months, as the Treasury may determine¹⁴. Where the deceased leaves no surviving spouse, the annual rate of a children's pension must be:

- 110 (a) while the eligible children of the deceased are two or more in number, two-thirds of the annual rate of the deceased's judicial pension¹⁵; and
- 111 (b) while there is only one eligible child of the deceased, one-third of the annual rate of the deceased's judicial pension¹⁶.

Where the deceased leaves a surviving spouse, the annual rate of a children's pension during the life of the surviving spouse must be:

- 112 (i) while the eligible children of the deceased are two or more in number, one-half of the annual rate of the deceased's judicial pension; and
- 113 (ii) while there is only one eligible child of the deceased, one-quarter of the annual rate of the deceased's judicial pension;

and the annual rate of the children's pension after the death of the surviving spouse must be the rate specified in head (a) or, as the case may be, head (b) above¹⁷; but where the deceased leaves a surviving spouse who remarries, the Treasury may, if it thinks fit, direct that head (a) or head (b) above is to apply, instead of head (i) or head (ii) above, as respects any period when the surviving spouse has a spouse¹⁸.

1 le the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante, 548 et seq post.

2 As to the persons to whom ibid Pt I (as amended) applies see PARA 538 ante.

3 As to persons holding qualifying judicial office and service in such office see PARA 539 ante.

4 Judicial Pensions and Retirement Act 1993 s 6(1).

5 For these purposes, the 'natural children' of any person are any children of whom that person is the genetic father or mother: ibid s 6(8).

6 For these purposes, 'step-children of the deceased' means (1) any natural children of any person to whom the deceased was at any time married who, at the time of the marriage, either had been born or were in gestation; (2) any children adopted by such a person before the marriage to the deceased; and (3) any children adopted by such a person after the marriage to the deceased in a case where the adoption proceedings were pending at the time of the marriage: ibid s 6(7). As to annulment of marriage see s 17; and PARA 546 ante.

7 Where the deceased died while holding qualifying judicial office, his death is to be treated for these purposes as his retirement from such office: ibid s 6(6).

8 le under ibid s 6(5): s 6(2)(d). The Treasury may direct that a person ('the child') who was adopted by the deceased is to be regarded as falling within s 6(2)(d) (see head (4) in the text) if the Treasury is satisfied: (1) that the deceased had, before his retirement from qualifying judicial office, formed the intention of adopting the child; and (2) that, immediately before that retirement, the child was wholly or mainly dependent on the deceased: s 6(5).

9 Ibid s 6(2). For these purposes, a person is in his 'period of childhood and full-time education' at any time if, and only if, at that time: (1) he has not attained the age of 16 years; (2) he is receiving full-time instruction at any university, college, school or other educational establishment; or (3) he is undergoing training by any person ('the employer') for any trade, profession or vocation in such circumstances that he is required to devote the whole of his time to the training for a period of not less than two years and while he is undergoing the training, the emoluments receivable by him, or payable by the employer in respect of him, do not exceed the maximum allowable remuneration, disregarding for this purpose any emoluments receivable or payable by way of return of any premium paid in respect of the training: s 7(1). A person is not to be regarded for these purposes as coming within head (2) or head (3) supra at any time unless he has come within one or other of those heads at all times since he attained the age of 16: s 7(2). Where there is a period during which a person comes within neither head (2) nor head (3) supra, then, if the Treasury thinks fit and is satisfied that the person's full-time education ought not to be regarded as completed, it may direct either that that period is to be disregarded for the purposes of s 7(2) or that the person is to be regarded for these purposes as having come within head (2) or head (3) supra throughout that period: s 7(3). For these purposes, 'emoluments' means any salary, fees, wages, perquisites or profits or gains whatsoever, and includes the value of free board, lodging or clothing; 'the maximum allowable remuneration' at any time is an annual rate (£1,614 a year, at the passing of the 1993 Act (ie 29 March 1993)) equal to that at which a pension of £250 a year first awarded under the principal civil service pension scheme on 1 June 1972 and increased from time to time by the amount of increase that would be applied under the Pensions (Increase) Act 1971 to such a pension, would (as so increased) be payable at that time: Judicial Pensions and Retirement Act 1993 s 7(4). Where a premium has been paid in respect of the training of a person, all emoluments at any time receivable by him, or payable by the employer in respect of him, must be taken for the purposes of head (3) supra to be receivable or payable by

way of return of the premium, unless and to the extent that the amount of those emoluments exceeds in the aggregate the amount of the premium: s 7(5). As to the principal civil service pension scheme see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 576.

10 le in accordance with ibid s 8: see the text and notes 15-18 infra.

11 Ibid s 6(3)(a).

12 Ibid s 6(3)(b).

13 Ibid s 6(3)(c).

14 Ibid s 6(4).

15 'The annual rate of the deceased's judicial pension' has the same meaning for these purposes as it has for the purposes of ibid s 5 (see PARA 546 ante): s 8(4).

16 Ibid s 8(1).

17 Ibid s 8(2).

18 Ibid s 8(3).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

547 Children's pension

TEXT AND NOTES--1993 Act ss 6, 8 amended: SI 2005/3325.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993/(C) Derivative Benefits/548. Contribution towards cost of surviving spouse's and children's pension.

548. Contribution towards cost of surviving spouse's and children's pension.

Such contributions as may be prescribed by regulations¹ made for these purposes must be made towards the cost of the liability for any surviving spouse's or children's pension or pensions² in respect of a person's service in qualifying judicial office³. The prescribed contributions must be in the form of deductions from the salary payable in respect of the service⁴. Notwithstanding this requirement, in the case of persons to whom Part I of the Judicial Pensions and Retirement Act 1993⁵ applies⁶ by virtue of appointment to a different qualifying judicial office on or after 31 March 1995⁷ from the one held immediately before that date⁸, reappointment after that date to qualifying judicial office having previously retired from such office⁹ or an election for that Part to apply¹⁰, the prescribed contributions may be in the form of

either deductions from the salary payable in respect of the service or a reduction of any lump sum payable¹¹ in respect of the service, or partly in one of those forms and partly in the other¹².

No contribution must be made by a person for any period of service during which an election for a personal pension¹³ is in force in respect of him¹⁴.

While an office holder¹⁵ is a member of the Part I scheme¹⁶ he must make periodical contributions¹⁷ in accordance with the relevant regulation¹⁸. Where an office holder transfers into the Part I scheme from another judicial pension scheme ('a transferring member') he must be given a credit in respect of contributions he has made whilst a member of that, and any previous, judicial pension scheme. This is called a contributions credit and is expressed as a period of time¹⁹. Where this period of time is less than the notional service²⁰ of a transferring member, he may make additional contributions²¹.

Where a transferring member ceases to hold qualifying judicial office there must be calculated the period for which he was liable to make contributions ('the contributions liability period')²² and the period for which he has made or is deemed to have made contributions ('the contributions payment period')²³. The contributions liability period must then be compared²⁴ with the contributions payment period and if the contributions liability period is the lesser period, or there is no contributions liability period, then a refund of contributions must be made²⁵; and if the contributions liability period is the greater period, the deficit of contributions must be deducted from the lump sum payable to or in respect of the transferring member²⁶ on his ceasing to hold qualifying judicial office²⁷. Contributions will be refunded to members who are not transferring members in certain circumstances²⁸.

Particular provision is made with regard to a former holder of the office of Lord Chancellor²⁹.

1 The power to make regulations under the Judicial Pensions and Retirement Act 1993 s 9 (see the text and notes 2-18 *infra*) is exercisable by the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 *ante*) with the concurrence of the Treasury: s 9(5). As to making regulations generally see PARA 535 note 2 *ante*. In the exercise of this power the Lord Chancellor has made the Judicial Pensions (Contributions) Regulations 1998, SI 1998/1219, which came into force on 1 August 1998: see reg 1. See further the text and notes 15-29 *infra*. For transitional provisions see reg 4. As to the Lord Chancellor see PARA 501 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*.

2 Ie any pensions under the Judicial Pensions and Retirement Act 1993 ss 5-8: see PARAS 546-547 *ante*.

3 *Ibid* s 9(1). As to persons holding qualifying judicial office and service in such office see PARA 539 *ante*.

4 *Ibid* s 9(3).

5 Ie *ibid* Pt I (ss 1-18) (as amended): see PARA 538 *et seq* *ante*, para 549 *post*.

6 As to the persons to whom *ibid* Pt I (ss 1-18) (as amended) applies see PARA 538 *ante*.

7 Ie the commencement date of the Judicial Pensions and Retirement Act 1993: see PARA 535 note 5 *ante*.

8 Ie applies by virtue of *ibid* s 1(1)(b): see PARA 538 *ante* at head (2) in the text.

9 Ie applies by virtue of *ibid* s 1(1)(c): see PARA 538 *ante* at head (3) in the text.

10 Ie applies by virtue of *ibid* s 1(1)(d): see PARA 538 *ante* at head (4) in the text.

11 Ie under *ibid* s 4: see PARA 545 *ante*.

12 *Ibid* s 9(4).

13 Ie an election under *ibid* s 13 (as amended): see PARA 541 *ante*.

14 *Ibid* s 9(2).

15 'Office holder' means a person serving in an office in respect of which a surviving spouse's or children's pension may be granted under the Judicial Pensions and Retirement Act 1993 Pt I (as amended): Judicial Pensions (Contributions) Regulations 1998, SI 1998/1219, reg 2(1).

16 'Part I scheme' means the pension scheme constituted under the Judicial Pensions and Retirement Act 1993 Pt I (as amended): Judicial Pensions (Contributions) Regulations 1998, SI 1998/1219; reg 2(1).

17 'Contribution' means a contribution towards the cost of the liability for a surviving spouse's or children's pension: *ibid* reg 2(1).

18 *Ibid* reg 5(1). The relevant regulation is reg 6. Contributions must be made at a rate of 3% of the office holder's pension-capped salary for the time being as it becomes due throughout his service in qualifying judicial office while a member of the Part I scheme, until the office holder ceases to hold qualifying judicial office or the office holder has made contributions for a period of 20 years, whichever occurs first: reg 6(1). The responsible authority must deduct contributions from the salary of the office holder: reg 6(2). 'Responsible authority' means, in relation to an office holder, the person or body responsible for paying his salary: reg 2(1). For the meaning of 'pension-capped salary' see PARA 544 note 4 ante. An office holder is deemed to have made contributions in respect of any period by which his service is increased in accordance with the provisions of the Judicial Pensions and Retirement Act 1993 s 2(7)(c) (see PARA 543 ante): Judicial Pensions (Contributions) Regulations 1998, SI 1998/1219, reg 7(1). Where an office holder acquires an additional period of service in the Part I scheme by virtue of any additional voluntary contributions made by him while a member of that scheme (see PARA 549 post) he is deemed to have made contributions to the Part I scheme for the length of the additional period of service which he has acquired: reg 7(2). Where, under the regulations, an office holder is entitled to a refund of contributions, he is not entitled to a refund of any contributions which he is so deemed to have made: reg 7(3).

19 *Ibid* reg 5(2). The contributions credit is calculated in accordance with regs 9, 10.

20 'Notional service' means the period of service credited to an office holder who transfers into the Part I scheme from another judicial pension scheme, on the date of his transfer into that scheme, calculated in accordance with the Judicial Pensions (Transfer between Judicial Pension Schemes) Regulations 1995, SI 1995/636 (as amended) (see PARA 538 ante): Judicial Pensions (Contributions) Regulations 1998, SI 1998/1219, reg 2(1).

21 *Ibid* reg 5(3). Additional contributions are made in accordance with reg 11, at a rate not exceeding 12% of the office holder's pension-capped salary: see reg 11(4).

22 The contributions liability period is calculated in accordance with *ibid* reg 12. An office holder has no contributions liability period if he is unmarried at the date that he ceases to hold qualifying judicial office and he has never had either a spouse or eligible children during his period of actual service in such office: reg 12(3). The maximum period is 20 years: see reg 12(4).

23 *Ibid* reg 5(4). The contributions payments period is calculated in accordance with reg 13(2). The contributions payment period of an office holder is the sum of the total length of his contributions credit, the total period or periods during which he made actual contributions as a member of the Part I scheme and the period or periods (if any) for which he is treated as making contributions by virtue of reg 11: reg 13(2). Where the contributions payment period is less than the office holder's contributions liability period, the deficit of contributions, calculated in accordance with reg 14, must be deducted from the lump sum otherwise payable to or in respect of the office holder: reg 13(3). Where the contributions payment period exceeds the office holder's contributions liability period, any periodical contributions made by him for the period which is equal to the excess period and which ends on the date he last made contributions must be refunded together with compound interest: reg 13(4). Where an office holder has no contributions liability period any periodical contributions made by him must be refunded together with compound interest: reg 13(5). The scheme administrators must pay any refunds due under reg 13 to the office holder or, if he has died, to the person nominated by him for the purpose of the Judicial Pensions and Retirement Act 1993 s 4(3) (see PARA 545 ante) or in default of nomination, his personal representatives: Judicial Pensions (Contributions) Regulations 1998, SI 1998/1219, reg 13(6). The scheme administrators must, in making any refunds in pursuance of reg 13, deduct the appropriate amount in respect of tax charged under the Income and Corporation Taxes Act 1988 s 598 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 760): Judicial Pensions (Contributions) Regulations 1998, SI 1998/1219, reg 13(7).

24 *Ie* in accordance with *ibid* reg 13: reg 5(5).

25 *Ibid* reg 5(5)(a). The refund must be made in accordance with reg 13.

26 *Ie* in accordance with *ibid* reg 14: reg 5(5)(b).

27 *Ibid* reg 5(5)(b).

28 Ibid reg 5(6). Regulation 15 deals with the circumstances in which such refunds will be made.

29 Ibid reg 5(7). Such provision is made by reg 16.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

548 Contribution towards cost of surviving spouse's and children's pension

NOTE 1--SI 1998/1219 amended: SI 2005/3325.

See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

NOTE 18--Contributions must now be made at a rate of 1.8 per cent: SI 1998/1219 reg 6(1) (amended by SI 2006/749).

NOTE 19--SI 1998/1219 reg 10 amended: SI 2006/749.

NOTE 21--SI 1998/1219 reg 11(4) revoked: SI 2006/749.

NOTE 23--SI 1998/1219 reg 13(7) revoked: SI 2006/749.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993/(D) Additional Benefits/549. Additional benefits from voluntary contributions.

(D) ADDITIONAL BENEFITS

549. Additional benefits from voluntary contributions.

Regulations¹ may make provision:

- 114 (1) entitling any person to whom Part I of the Judicial Pensions and Retirement Act 1993² applies³ to make voluntary contributions towards the cost of the provision of additional benefits, whether under the scheme constituted by that Part or otherwise⁴; or
- 115 (2) imposing conditions with respect to the exercise by any such person of any entitlement (whether or not under head (1) above) which he may have to make any such voluntary contributions⁵;
- 116 (3) for the purpose of imposing, in a case where a person to whom that Part applies makes voluntary contributions, upper limits with respect to the aggregate value of the aggregable benefits⁶ which may be paid to or in respect of any such

person and the amount which any such person may pay by way of such contributions⁷.

Regulations may prescribe the manner in which aggregable benefits are to be valued for the purpose of any such aggregation as is mentioned in head (3) above⁸ and confer on the administrators of the scheme⁹ constituted by Part I of the 1993 Act power to require a person to whom that Part applies who is making, or who wishes to make, voluntary contributions to provide such information as they may require concerning any retained benefits of his¹⁰. Regulations may also permit the disclosure by those administrators of any information which they may obtain concerning any such retained benefits to, or to any officers of, the Commissioners of Inland Revenue or to, or to any servants or agents of, any authorised provider¹¹ who is, or may be, concerned in the investment of the voluntary contributions or the provision of the additional benefits in question¹².

Regulations under these provisions may not, however, prohibit the payment of voluntary contributions¹³. They must secure that any voluntary contributions paid by a person are used to provide additional benefits for or in respect of him¹⁴ and that the value of such additional benefits is reasonable having regard to the specified matters¹⁵. Such regulations may, in particular:

- 117 (a) provide that the value of additional benefits offered on payment of voluntary contributions is to be determined in accordance with prescribed rules based on tables prepared for the purposes of the regulations by the Government Actuary¹⁶;
- 118 (b) prescribe the manner in which it is to be determined in any case whether the amount of a person's contributions exceeds any prescribed limit¹⁷;
- 119 (c) provide for any administrative expenses incurred by any person by virtue of these provisions to be defrayed out of sums received by way of voluntary contributions¹⁸;
- 120 (d) provide for the manner in which voluntary contributions are to be made¹⁹;
- 121 (e) make provision for, and in connection with, the valuation of a person's accrued rights under any occupational or personal pension scheme, which are to be transferred into a voluntary contributions scheme²⁰, or under any voluntary contributions scheme, which on termination of his membership of that scheme may fall to be transferred into another scheme²¹;
- 122 (f) prescribe the additional benefits which are to be available under a voluntary contributions scheme and the rates and times at which those benefits are to be payable²²;
- 123 (g) make provision for and in connection with the making of elections between different benefits available under voluntary contributions schemes²³;
- 124 (h) provide for the terms on which a person may terminate his membership of a voluntary contributions scheme²⁴;
- 125 (i) provide for the terms on which surplus funds²⁵ may be refunded to a person who has made payments by way of voluntary contributions to a voluntary contributions scheme²⁶;
- 126 (j) specify any authorised providers who are to invest any prescribed voluntary contributions or who are to provide any prescribed additional benefits, and, if two or more authorised providers are so specified, may make provision entitling any person who makes prescribed payments by way of voluntary contributions to elect between those authorised providers²⁷.

Such regulations may also provide for such additional benefits arising under or by virtue of these provisions as may be prescribed to be charged on and paid out of the Consolidated Fund²⁸ or to be paid out of money provided by Parliament²⁹.

There may be paid out of money provided by Parliament any sums required for or in connection with the operation or administration of any prescribed voluntary contributions scheme or any administrative expenses incurred under or by virtue of the above provisions by a minister of the Crown or government department³⁰. Any sums received under the above provisions may be paid into the Consolidated Fund³¹.

1 The power to make regulations under the Judicial Pensions and Retirement Act 1993 s 10 (see the text and notes 2-28 infra) is exercisable by the appropriate minister (ie the Lord Chancellor: see PARA 535 note 2 ante) with the concurrence of the Treasury: s 10(7). Without prejudice to s 29(6) (see PARA 535 note 2 ante), regulations under s 10 (as amended) may make different provision for different classes or descriptions of voluntary contributions scheme: s 10(9). 'Voluntary contributions scheme' means any occupational pension scheme if and to the extent that it is a scheme under which such additional benefits as are mentioned in s 10(1) (see heads (1)-(2) in the text) are, or are to be, provided: s 10(8). As to making regulations generally see PARA 535 note 2 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. In the exercise of the power so conferred, the Lord Chancellor has made the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639 (as amended), which came into force on 31 March 1995: see reg 1.1. These regulations are not set out in full in this title because of their technical nature: for a summary of their main provisions see the text and notes 4, 6-7, 9-10, 12, 18-26 infra. The regulations provide for the Judicial Additional Voluntary Contributions Scheme (see Pt II (regs 2.1-2.31) (as amended)) and also for Free-standing Additional Voluntary Contribution Schemes (see Pt III (regs 3.1-3.3) (as amended)).

2 le the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante.

3 As to persons to whom ibid Pt I (as amended) applies see PARA 538 ante.

4 Ibid s 10(1)(a). The Judicial Additional Voluntary Contributions Scheme is constituted under the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, Pt II (regs 2.1-2.31) (as amended): reg 2.1. Membership of the scheme is open to persons to whom the Judicial Pensions and Retirement Act 1993 Pt I (as amended) applies; and to persons who hold qualifying judicial office on 31 March 1995 and who held such office at any time before that day but to whom Pt I (as amended) does not apply except to persons to whom Pt I (as amended) does not apply because the person has made an election under s 13 or under the corresponding provisions (as defined in s 13(9) (as amended)) (see PARA 541 ante), and to certain other officers not holding offices in the Supreme Court or county courts: see the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.2(1). Application for membership of the scheme must be made in writing to the administrators: reg 2.2(2). Members to whom the Judicial Pensions and Retirement Act 1993 Pt I (as amended) applies must notify the administrators in their application of their assumed retirement age: reg 2.2(3). Before his application for membership of the scheme is accepted, an applicant must provide, and must authorise to be provided, such information as may be requested by the scheme administrators relating to his medical history and state of health: reg 2.2(4) (added by SI 1996/52).

5 Judicial Pensions and Retirement Act 1993 s 10(1)(b).

6 For these purposes, 'aggregable benefits' means: (1) any pensions or other benefits under ibid Pt I (as amended), other than such additional benefits as are mentioned in s 10(1) (see head (1) in the text); (2) such additional benefits so mentioned as may be prescribed; and (3) such retained benefits as may be prescribed; and 'retained benefits' in the case of any person, means any rights retained by him to relevant benefits under any occupational or personal pension scheme which has, or which may be expected to qualify for, tax-exemption or tax-approval, being rights which accrued during some previous employment: s 10(8). 'Employment' has the same meaning as it has in the Pension Schemes Act 1993 (and accordingly includes employment as a self-employed earner, within the meaning of the Social Security Contributions and Benefits Act 1992 s 2 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 32)); 'prescribed' means specified in, or determined in accordance with, regulations under s 10; 'relevant benefits' has the meaning given by the Income and Corporation Taxes Act 1988 s 612 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 741 note 6); 'occupational pension scheme' and 'personal pension scheme' have the meanings given by the Pension Schemes Act 1993 s 1 (as amended) or the equivalent Northern Ireland legislation (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 741, 710 respectively); and 'tax-exemption' and 'tax-approval' have the meaning given by the Pension Schemes Act 1993 s 181(1) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 898 note 4); Judicial Pensions and Retirement Act 1993 s 10(8) (amended by the Pension Schemes Act 1993 s 190, Sch 8 para 46(1); and by the Pension Schemes (Northern Ireland) Act 1993 s 184, Sch 7 para 43(1)).

For the maximum benefits payable to members of the Judicial Additional Voluntary Contributions Scheme see the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, regs 2.7-2.13 (as amended). The maximum amount of pension benefit ascertained under regs 2.7-2.13 (as amended) may be increased by up to 3% for each complete year, or in proportion to the increase in the Index which has occurred

since payment of the pension commenced, if greater: reg 2.14. 'Index', at any time, means the index of retail prices published by the Central Statistical Office of the Chancellor of the Exchequer, or any successor agreed as appropriate by the Board of Inland Revenue, for the calendar month three months prior to that time: reg 1.2.

7 Judicial Pensions and Retirement Act 1993 s 10(2). Without prejudice to the generality of s 10(2)(b) (limit on amount which may be paid by way of voluntary contributions), any such regulations may, in particular, impose such an upper limit on the amount which a person may pay by way of voluntary contributions as will, so far as reasonably practicable, secure that the aggregate value referred to in s 10(2)(a) will not exceed the limit so prescribed: s 10(2). Such regulations may not, however, impose any limit on the amount which a person may pay by way of voluntary contributions, other than either or both of the following, that is to say: (1) such upper limit as may be imposed by virtue of s 10(2)(b); or (2) an upper limit corresponding to that for the time being fixed by or under the Income and Corporation Taxes Act 1988 s 594 (as amended) (exempt statutory schemes: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 756): Judicial Pensions and Retirement Act 1993 s 10(4) (b). Where a person's voluntary contributions are made by deduction from salary, any reference to payment of or by way of voluntary contributions is to be taken to include a reference to the making of voluntary contributions by deduction or, as the case may require, to any voluntary contributions so made: s 10(8).

The member must instruct the administrators in writing as to the level of contributions that he wishes to make: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.15(1). As to the maximum contributions see reg 2.15(2), (3).

8 Judicial Pensions and Retirement Act 1993 s 10(3)(a).

9 The administrators of the Judicial Additional Voluntary Contributions Scheme are the administrators of the pension scheme constituted under the Judicial Pensions and Retirement Act 1993 Pt I (as amended) (see PARA 545 note 11 ante) or the administrators of an existing scheme as appropriate: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.1(3).

10 Judicial Pensions and Retirement Act 1993 s 10(3)(b). For the information which must be provided by members of the Judicial Additional Voluntary Contributions Scheme see the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.3. The administrators must also require details of retained death benefits: see reg 2.4.

11 'Authorised provider', in relation to the investment of any sums paid by way of voluntary contributions or the provision of any benefit, means: (1) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 to invest such sums or, as the case may be, to provide that benefit; (2) an EEA firm of a kind mentioned in Sch 3 para 5(a), (b) or (c), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to invest such sums or, as the case may be, to provide that benefit and which satisfies the conditions applicable to it which are specified in the Judicial Pensions and Retirement Act 1993 s 10(8B), (8C) or (8D) (as added); or (3) an EEA firm of a kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(d), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to invest such sums or, as the case may be, to provide that benefit: Judicial Pensions and Retirement Act 1993 s 10(8) (definition substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 112(3)(a)). In the Judicial Pensions and Retirement Act 1993 s 10(8) (as amended), the definitions of 'authorised provider' and 'insurer' (see note 15 infra) must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22, and Sch 2: Judicial Pensions and Retirement Act 1993 s 10(8A) (s 10(8A)-(8E) added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 112(4)). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(a), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on a service falling within section A or C of the Annex to the Investment Services Directive, and that the firm is authorised by its home state authorisation to carry on that service: Judicial Pensions and Retirement Act 1993 s 10(8B) (as so added). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(b), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within Annex 1 to the Banking Consolidation Directive, and that the activity in question is one in relation to which an authority in the firm's home state has regulatory functions: Judicial Pensions and Retirement Act 1993 s 10(8C) (as so added). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(c), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within Annex 1 to the Banking Consolidation Directive, that the activity in question is one in relation to which an authority in the firm's home state has regulatory functions, and that the firm also carries on the activity in question in its home state: Judicial Pensions and Retirement Act 1993 s 10(8D) (as so added). Expressions used in s 10(8B)-(8D) (as so added) which are also used in the Financial Services and Markets Act 2000 Sch 3 have the same meaning in those subsections as they have in that Schedule: Judicial Pensions and Retirement Act 1993 s 10(8E) (as so added). See further FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315 et seq.

12 Ibid s 10(3)(c). The administrators of the Judicial Additional Voluntary Contributions Scheme may disclose any information obtained relating to retained benefits or retained death benefits to the bodies or persons

mentioned in s 10(3)(c): Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.5. A member's contributions and any transfer payment accepted under reg 2.22 must be invested with an authorised provider for the purpose of providing benefits: reg 2.16.

13 Judicial Pensions and Retirement Act 1993 s 10(4)(a).

14 Ibid s 10(4)(c). This has effect only in relation to a voluntary contributions scheme constituted by or under Pt I (as amended) : s 10(4).

15 Ibid s 10(4)(d). The matters to which regard must be had are: (1) the amount paid by way of voluntary contributions; (2) the value of the other benefits provided under the scheme constituted by Pt I (as amended); and (3) the general value of benefits available to a person under any contract of life insurance entered into by him with an insurer: s 10(4)(d) (amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 112(2)). 'Insurer' means: (a) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 to effect or carry out contracts of long-term insurance; (b) an EEA firm of the kind mentioned in Sch 3 para 5(d), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to effect or carry out contracts of long-term insurance: Judicial Pensions and Retirement Act 1993 s 10(8) (definition added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 112(3)(b)). See also note 11 supra. This has effect only in relation to a voluntary contributions scheme constituted by or under the Judicial Pensions and Retirement Act 1993 Pt I (as amended): s 10(4).

16 Ibid s 10(5)(a).

17 Ibid s 10(5)(b).

18 Ibid s 10(5)(c). Any administrative expenses incurred, to an extent agreed by the administrators of the Judicial Additional Voluntary Contributions Scheme, by the authorised provider by virtue of acting as authorised provider under the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639 (as amended), may be defrayed out of sums received by way of voluntary contributions: reg 2.31 (added by SI 1996/52).

19 Judicial Pensions and Retirement Act 1993 s 10(5)(d). A member may make contributions into the scheme to the limits set out in the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.15, by either single payments to the limit of two in any one financial year or regular payments, and in either case payment must be made by way of deduction from the member's salary: reg 2.18.

20 Judicial Pensions and Retirement Act 1993 s 10(5)(e)(i). Where a member of the Judicial Additional Voluntary Contributions Scheme wishes to make such a payment from a non-judicial occupational pension scheme, he must declare to the administrators the contributions already made and the salary received in the 12 months prior to the date of transfer into the scheme: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.23.

21 Judicial Pensions and Retirement Act 1993 s 10(5)(e)(ii). A payment representing the cash equivalent of a member's accrued rights in any other qualifying scheme (as defined by the Judicial Pensions and Retirement Act 1993 s 23, Sch 2 para 11(3): see PARA 553 post) may only be accepted by the Judicial Additional Voluntary Contributions Scheme if it is from another voluntary contributions scheme and it is certified by the administrator of that scheme to derive from only the member's own contributions to that scheme, and any transfer payment into that scheme, with any interest that may be payable: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.22.

22 Judicial Pensions and Retirement Act 1993 s 10(5)(f). Subject to the limits referred to in the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, regs 2.7-2.13 (as amended), a member of the Judicial Additional Voluntary Contributions Scheme is entitled to the benefits attributable to the contributions paid by the member, and by any payment accepted under reg 2.22 (transfer payments): reg 2.24(1). The benefits permitted are: (1) subject to reg 2.26, a pension payable to the member from the member's retirement during his lifetime, under which payments may be guaranteed to be payable for up to 10 years after retirement in any event or payments may be guaranteed to be payable for up to five years after retirement with any balance in respect of any period between death and the expiry of that period of five years being paid in one lump sum on death; (2) a lump sum payable on the death of the member; (3) where the member dies before retirement, or in the circumstances referred to in reg 2.28(2)(c), the total realisable value of the investments made by the administrators with the contributions paid by the member and any transfer payment accepted under reg 2.22; (4) subject to reg 2.26, a pension payable on the death of the member after retirement to one or more of (a) his spouse during the remainder of her lifetime; and (b) his children until the child reaches the age of 18 or, if later, ceases to receive full time education or vocational training: reg 2.24(2). Pensions may be level in payment, increase at a fixed rate not exceeding 3% per annum compound or vary in line with the Index: reg 2.24(3). In the case of benefits payable at or after a member's retirement, the member may choose which of the above types of benefit is to be payable and must give notice in writing to the

administrators at retirement of his choice: reg 2.24(4). Benefits under the scheme must be paid by the administrators in accordance with these regulations and are only payable at the date that the member's pension under the Judicial Pensions and Retirement Act 1993 Pt I (as amended) or under an existing scheme comes into payment or, in relation to a surviving spouse's or children's pension, the date at which those benefits become payable under Pt I (as amended) or under an existing scheme: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.25. Benefits at retirement may normally only be taken in pension form but the whole of the member's pension may be commuted for a lump sum, from which any tax payable by the administrators must be deducted, where (i) the pension equivalent of the member's pension benefits from all sources does not exceed £260 per annum; (ii) the pension is payable under reg 2.24(2)(d) and does not exceed £260 per annum; or (iii) the administrators are satisfied on medical evidence that the member is fatally ill: reg 2.26. A member may nominate a person to receive any lump sum payable on his death by giving notice in writing to the administrators; and if no such nomination is made, the administrators must pay the lump sum to the personal representatives of the member: reg 2.27.

23 Judicial Pensions and Retirement Act 1993 s 10(5)(g).

24 Ibid s 10(5)(h). A member may cease to be a member of the Judicial Additional Voluntary Contributions Scheme at any time before benefits provided under the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.24 are paid: reg 2.28(1). See further reg 2.28(2)-(5) (as amended).

25 'Surplus funds', in relation to a person and any voluntary contributions scheme, means any funds which are, or have been, held for the purposes of that voluntary contributions scheme and which fall to be returned to him in consequence of any such limit as is mentioned in the Judicial Pensions and Retirement Act 1993 s 10(4)(b) (see note 7 supra): s 10(8).

26 Ibid s 10(5)(j). See the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.29.

27 Judicial Pensions and Retirement Act 1993 s 10(5)(k).

28 Ibid s 10(6)(a).

29 Ibid s 10(6)(b).

30 Ibid s 10(10). This is without prejudice to s 10(5)(c), (d), (6) (see the text and notes 18-19, 27-28 supra): s 10(10).

31 Ibid s 10(11).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

549 Additional benefits from voluntary contributions

TEXT AND NOTES--SI 1995/639 further amended: SI 2005/3325, SI 2006/747, SI 2007/1898.

NOTE 1--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

NOTE 7--Words 'either or both ... is to say' and head (2) omitted: Judicial Pensions and Retirement Act 1993 s 10(4)(b) (amended by SI 2006/497).

NOTE 11--Reference to section A or C of the Annex to the Investment Services Directive is now to section A or B of Annex I to the Markets in Financial Instruments Directive (ie European Parliament and Council Directive 2004/39): 1993 Act s 10(8B) (amended by SI 2007/126).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993/(D) Additional Benefits/550. Purchase of added years or added units of benefit.

550. Purchase of added years or added units of benefit.

Provision is made by the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995¹ for the Judicial Added Years Scheme ('JAYS'), the Judicial Added Surviving Spouse's Pension Scheme ('JASSPS') and the Judicial Added Benefits Scheme ('JABS')². Membership of the JAYS and the JASSPS is open to any person to whom Part I of the Judicial Pensions and Retirement Act 1993³ applies⁴ and membership of the JABS is open to a person who is a member of an existing scheme⁵, with certain exclusions⁶.

A member of the JAYS has a right to increase his length of service in qualifying judicial office⁷ by the purchase of added years of pension credit⁸. The maximum number of years' service which may accrue to a member is 20⁹ and the maximum number of added years that a member may purchase is the difference between the number of years' service determined in accordance with the regulations¹⁰ and 20¹¹.

A member of the JASSPS has a right to purchase added units of surviving spouse's pension during any period in which he currently has a spouse to whom benefits could be paid under the scheme¹². Added units of benefit in the JASSPS may be purchased up to such amount as the administrators determine will provide a surviving spouse's pension equal to the amount calculated in accordance with the regulations¹³.

A member of the JABS has a right to purchase added units of benefit in his existing scheme¹⁴.

Provision is made for the refund of contributions in certain circumstances¹⁵.

Benefits payable to members under the JAYS, the JASSPS or the JABS in respect of a member holding office as a judge¹⁶ at the date of retirement must be charged on and paid out of the Consolidated Fund¹⁷. Benefits payable to members under the JAYS, the JASSPS or the JABS in respect of a member holding any other office at the date of retirement must be paid out of money provided by Parliament¹⁸.

1 Ie the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639 (as amended): see the text and notes 2-14 infra; and PARA 549 ante.

2 Ibid reg 4.1(1). The administrators of the JAYS, the JASSPS and the JABS are the administrators of an existing scheme or of the pension scheme constituted under the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended) (see PARA 538 et seq ante) as appropriate: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.1(4).

3 Ie the Judicial Pensions and Retirement Act 1993 Pt I (as amended): see PARA 538 et seq ante.

4 Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.2(1). As to the persons to whom ibid Pt I (as amended) applies see PARA 538 ante.

5 'Existing scheme' means a judicial pension scheme other than that constituted by the Judicial Pensions and Retirement Act 1993 and which is not a voluntary contributions scheme: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 1.2.

6 Ibid reg 4.2(4). For the exclusions, which do not relate to persons holding offices in the Supreme Court or county courts, see reg 2.2(1)(b)(ii)-(vi).

7 As to persons holding qualifying judicial office see PARA 539 ante.

8 Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.2(2).

9 Ibid reg 4.3(1).

10 Ie determined in accordance with ibid reg 4.3(3)-(6) (as amended): reg 4.3(2).

11 Ibid reg 4.3(2). The right to purchase added years must be exercised by notice in writing to the administrators while the member is still holding qualifying judicial office and may not be exercised if the member has reached the assumed retirement age: reg 4.6(1). Before contracting to purchase added years the member must sign a declaration stating that he has no reason to believe that his health may prevent him from serving until the assumed retirement age: reg 4.6(2). Contributions to the JAYS must be made by way of periodical deductions from salary only and must commence on a date agreed between the administrators and the member: reg 4.6(3). The making of periodical contributions at the relevant rate to the JAYS must continue until the member reaches the assumed retirement age, or dies, or leaves qualifying judicial office, or notifies the administrators that he wishes the contributions to cease, whichever occurs first: reg 4.6(6). As to the calculation of the amount of payment see reg 4.6(4), (5). As to the valuation of benefits under the JAYS see reg 4.10.

12 Ibid reg 4.2(3).

13 Ibid reg 4.4. The amount is calculated in accordance with reg 2.10. Regulation 4.6(2), (3), (6) (see note 11 supra) applies to the JASSPS except that for references to 'added years' there are substituted references to 'added units of surviving spouse's pension' and for the reference to 'the JAYS' there is substituted a reference to 'the JASSPS': reg 4.7(1) (reg 4.7(1), (2)-(5) amended, and reg 4.7(1A) added, by SI 1996/52). The right to purchase added units of surviving spouse's pension must be exercised by notice in writing to the administrators while the member is still holding qualifying judicial office and may not be exercised if the member has reached his assumed retirement age or in the 12 months before he reaches that date: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.7(1A) (as so added). As to the calculation of payments see reg 4.7(2)-(5) (as so amended). As to the valuation of benefits under the JASSPS see reg 4.11.

14 Ibid reg 4.2(5). As to the limits on the benefits that may be purchased see reg 4.5. As to the manner of making payments and the maximum contributions see regs 4.8, 4.9 (as amended). As to the valuation of benefits under the JABS see regs 4.12, 4.12A (as added and amended).

15 See ibid reg 4.13 (as amended).

16 Ie an office specified in the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt I (as amended): see PARA 539 ante.

17 Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.14(a).

18 Ibid reg 4.14(b).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

550 Purchase of added years or added units of benefit

TEXT AND NOTES--SI 1995/639 further amended: SI 2005/3325, SI 2006/747.

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551. Benefits in respect of earnings in excess of pension-capped salary.

The following provisions apply in any case where a pension or lump sum is payable under Part I of the Judicial Pensions and Retirement Act 1993¹ to or in respect of a person to whom that Part applies² (the 'judicial officer') and the amount which constitutes the judicial officer's pensionable pay³ is less than it would have been, had pension-capped salary⁴ fallen to be determined⁵ in his case without the limit imposed by reference to the permitted maximum⁶. In such a case, payments by way of pension or lump sum must be made to or in respect of the judicial officer amounting to the difference between the rate or amount payable in respect of the pension or lump sum referred to above, and the rate or amount that would have been payable in respect of that pension or lump sum, had pension-capped salary fallen to be determined in his case without the limit imposed by reference to the permitted maximum⁷.

No contributions are payable⁸ by the judicial officer in respect of the cost of the liability to make payments under these provisions⁹.

For the purposes of the provisions of the Income and Corporation Taxes Act 1988 regarding retirement benefit schemes¹⁰, these provisions are to be taken to constitute a statutory scheme¹¹ which is separate and distinct from any such scheme constituted by Part I of the 1993 Act or by any other enactment or instrument and which is not capable of being a relevant statutory scheme within the meaning of those provisions of the 1988 Act¹².

The Lord Chancellor¹³ may by regulations make provision for implementing these provisions¹⁴. Any such regulations may, in particular, make provision for or with respect to the calculation of benefits¹⁵ and for or with respect to the time at which and method by which payments under these provisions are to be made¹⁶.

Nothing in the above provisions applies in relation to any additional benefits provided¹⁷ under the statutory schemes for voluntary contributions¹⁸.

A person to whom a lump sum is paid under the above provisions but who resumes service in qualifying judicial office is not required to refund the lump sum; but if the whole or any part of it is not refunded, an amount equal to so much of it as has not been refunded must be deducted from any lump sum which subsequently becomes payable to or in respect of him under these provisions¹⁹.

The practical effect of the dichotomy between pension provision up to the pension-capped salary and the additional pension provision described above is that the lump sum payable in respect of earnings which exceed the pension-capped salary is liable to income tax²⁰.

1 le under the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante.

2 As to the persons to whom *ibid* Pt I (as amended) applies see PARA 538 ante.

3 For the meaning of 'pensionable pay' see *ibid* s 3(3); and PARA 544 ante.

4 For the meaning of 'pension-capped salary' see *ibid* s 3(3); and PARA 544 note 4 ante.

5 le under *ibid* s 3(3)(b): see PARA 544 ante.

6 *Ibid* s 19(1). The limit imposed by reference to the permitted maximum referred to in the text is the limit imposed by reference to the permitted maximum mentioned in s 3(3)(b): see PARA 544 ante.

7 *Ibid* s 19(2).

8 le under or by virtue of *ibid* s 9: see PARA 548 ante.

9 *Ibid* s 19(3).

10 le the Income and Corporation Taxes Act 1988 Pt XIV Ch I (ss 590-612) (as amended): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 747 et seq.

11 le within the meaning of *ibid* Pt XIV Ch I (as amended): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 747 et seq.

12 Judicial Pensions and Retirement Act 1993 s 19(4).

13 le as the appropriate minister: see PARA 535 note 2 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

14 Judicial Pensions and Retirement Act 1993 s 19(5). As to the power to make regulations generally see PARA 535 note 2 ante. In the exercise of the power so conferred, the Lord Chancellor has made the Judicial Pensions (Additional Benefits for Disregarded Earnings) Regulations 1995, SI 1995/640, which came into force on 31 March 1995: reg 1. See further notes 16, 19 *infra*.

15 Judicial Pensions and Retirement Act 1993 s 19(5)(a).

16 *Ibid* s 19(5)(b). The payment of pensions and lump sums under s 19 must be made in the same manner, at the same time and intervals and to the same persons as the payment of pensions and lump sums are made under Pt I (as amended); and any direction made by the Treasury under s 5 (see PARA 546 ante) in respect of the cessation or resumption of a surviving spouse's pension, or under s 6, s 7 or s 8 (see PARA 547 ante) in respect of the payment of a children's pension applies equally to any surviving spouse's pension or children's pension payable under s 19 that is calculated by reference to the pension so payable under Pt I (as amended): Judicial Pensions (Additional Benefits for Disregarded Earnings) Regulations 1995, SI 1995/640, reg 3(1), (2).

17 le provided under the Judicial Pensions and Retirement Act 1993 s 10: see PARA 549 ante.

18 *Ibid* s 19(1).

19 Judicial Pensions (Additional Benefits for Disregarded Earnings) Regulations 1995, SI 1995/640, reg 4.

20 As respects the periodical pension both the amount calculated on the pension-capped salary and the additional pension under the Judicial Pensions and Retirement Act 1993 s 19 are liable to income tax. See further INCOME TAXATION; SOCIAL SECURITY AND PENSIONS.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

551 Benefits in respect of earnings in excess of pension-capped salary

TEXT AND NOTES 10-12--Repealed: Taxation of Judicial Pensions (Consequential Provisions) Order 2006, SI 2006/497.

TEXT AND NOTES 13, 14--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

NOTE 16--SI 1995/640 reg 3(2) amended: SI 2005/3325.

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(E) TRANSFERS OF BENEFITS AND PENSION CREDITS

552. Transfers out of accrued benefits.

Where the qualifying service¹ of a person to or in respect of whom benefits are payable under a scheme² ends after 31 March 1995³ and at least one year before he reaches normal pension age⁴ and, on the date on which it ends, he has accrued rights to benefit under the scheme or he would have such rights if his service in qualifying judicial office⁵ had also ended on that date, the following provisions apply⁶. When his qualifying service ends, a qualifying member acquires a right to the cash equivalent⁷ at the relevant date⁸ of any benefits which have accrued to, or in respect of him, under the scheme or, where service of his in qualifying judicial office is disregarded service⁹, which would have so accrued if his service in qualifying judicial office had ended on the same date as that on which his qualifying service ended¹⁰.

A qualifying member who so acquires a right to a cash equivalent may only take it by exercising the option conferred by the following provisions¹¹. The option is that of requiring the Treasury to use the cash equivalent in whichever of the following ways the qualifying member chooses:

- 127 (1) for acquiring transfer credits allowed under the rules of another occupational pension scheme¹² whose trustees or managers are able and willing to accept him and which satisfies prescribed requirements¹³;
- 128 (2) for acquiring rights allowed under the rules of a personal pension scheme¹⁴ whose trustees or managers are able and willing to accept him and which satisfies prescribed requirements¹⁵;
- 129 (3) for purchasing from one or more authorised insurers¹⁶ chosen by the qualifying member and willing to accept payment on his account from the Treasury, one or more annuities which satisfy prescribed requirements¹⁷;
- 130 (4) for subscribing to other pension arrangements which satisfy prescribed requirements¹⁸.

A qualifying member may exercise his option in different ways in relation to different portions of his cash equivalent¹⁹ but must exercise it in relation to the whole of his cash equivalent or, in the specified circumstances²⁰, in relation to the whole of the reduced cash equivalent²¹.

A qualifying member may only exercise his option on or before the last option date²², which is either the date which falls one year before the date on which the qualifying member reaches normal pension age or the end of the period of six months beginning with the date on which his qualifying service ends, whichever is the later²³. A qualifying member loses the right to any cash equivalent under these provisions if his pension becomes payable before he reaches normal pension age or he fails to exercise his option on or before the last option date²⁴.

A qualifying member may only exercise his option by making an application in writing to the Treasury²⁵. In any case where a qualifying member has exercised his option and the Treasury has done what is needed to comply with the choice made by him in exercising his option, the Treasury is discharged from any obligation to provide benefits to which the cash equivalent related except, in certain cases²⁶, to the extent that an obligation to provide guaranteed minimum pensions or give effect to protected rights continues to subsist²⁷. If the Treasury receives such an application, it is its duty to do what is needed to comply with the choice made by the qualifying member in exercising his option within 12 months of the date on which it receives his application or by the date on which he attains normal pension age, whichever is the earlier²⁸.

A qualifying member may cancel the exercise of his option by giving the Treasury notice in writing that he no longer wishes it to be exercised²⁹. No such notice has effect if it is given to the Treasury at a time when, in order to comply with the choice made by the qualifying member in exercising his option, the Treasury has entered into an agreement with a third party to use the whole or part of his cash equivalent in a specified³⁰ way³¹.

A qualifying member who withdraws an application may make another³².

1 For these purposes, 'qualifying service' means the service by reference to which a qualifying member's entitlement to benefit under the scheme is calculated; 'member', in relation to a scheme, means a person to whom the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended) applies or has applied (see PARA 538 ante); 'qualifying member' means a person to whom s 23, Sch 2 Pt II (as amended) applies; and 'scheme' means the relevant occupational pension scheme constituted by Pt I (as amended) (see PARA 538 et seq ante) or s 19 (see PARA 551 ante): Sch 2 para 1(1) (renumbered by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 114(1)).

2 For the meaning of 'scheme' see note 1 supra.

3 Ie the commencement date of the Judicial Pensions and Retirement Act 1993: see PARA 535 note 5 ante.

4 For these purposes, 'normal pension age' means the earliest age at which, if his service in qualifying judicial office had continued until retirement at that age, a member of the scheme constituted by ibid Pt I (as amended) might have been entitled to receive a pension under the scheme at the appropriate annual rate (otherwise than by reason of infirmity of mind or body): Sch 2 para 1(1) (as renumbered: see note 1 supra).

5 As to persons holding qualifying judicial office and service in such office see PARAS 538-539 ante.

6 Judicial Pensions and Retirement Act 1993 Sch 2 para 4(1), (2).

7 Cash equivalents are to be calculated and verified in the prescribed manner: ibid Sch 2 para 7(1). 'Prescribed' means prescribed by regulations; and regulations for the purposes of Sch 2 (as amended) may be made, with the concurrence of the Treasury, by the Lord Chancellor: Sch 2 paras 1(1), 2 (para 1(1) as renumbered: see note 1 supra). In the exercise of this power, the Lord Chancellor has made the Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, which came into force on 31 March 1995: reg 1. As to cash equivalents see regs 6, 7. Regulations made under the Judicial Pensions and Retirement Act 1993 Sch 2 para 7(1) may, in particular, provide: (1) that in calculating cash equivalents account must be taken of any surrender or forfeiture of the whole or part of a qualifying member's pension which occurs before the Treasury does what is needed to comply with the choice made by him in exercising his option and, in a case where Sch 2 para 6(6) (as amended) (see note 20 infra) applies, of the need to deduct an appropriate amount to provide a guaranteed minimum pension or give effect to protected rights; and (2) that in prescribed circumstances a qualifying member's cash equivalent is to be increased or reduced: Sch 2 para 7(2). Without prejudice to the generality of Sch 2 para 7(2), the circumstances that may be specified by virtue of head (2) supra include the length of time which elapses between the termination of a qualifying member's qualifying service and his exercise of the option conferred by Sch 2 para 6 (as amended) (see the text and notes 11-21 infra): Sch 2 para 7(3). 'Guaranteed minimum pension' and 'protected rights' have the same meanings as in the Pension Schemes Act 1993 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 878, 883) and, in relation to Northern Ireland, the equivalent Northern Ireland legislation: Judicial Pensions and Retirement Act 1993 Sch 2 para 1(1) (as renumbered: see note 1 supra) (Sch 2 paras 1, 3, 6 amended by the Pension Schemes Act 1993 s 190, Sch 8 para 46; and by the Pension Schemes (Northern Ireland) Act 1993 s 184, Sch 7 para 43).

The transfer payment out of the Part I scheme or the section 19 scheme (ie the scheme constituted under the Judicial Pensions and Retirement Act 1993 Pt I (as amended) or under s 19 (see PARA 551 ante)) must not be less than the total of any previous transfer payments into that scheme together with, in the case of the Part I

scheme, the total contributions of the qualifying member during his membership of the scheme but excluding any voluntary contributions made under the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639 (see PARAS 549-550 ante); Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 9(1). The value of the transfer payment must be calculated exclusive of any compound interest that may be payable in respect of the transfer payments received or the contributions of the qualifying member: reg 9(2).

The Pension Schemes Act 1993 Pt IV Ch IV (ss 93-101 (as amended) (transfer values: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 951 et seq) and the corresponding Northern Ireland provisions do not apply in relation to those schemes to which the Judicial Pensions and Retirement Act 1993 Sch 2 (as amended) applies: Sch 2 para 3 (as so amended).

8 'The relevant date' means the date when the qualifying member's qualifying service ends, or the date of any application which he has made under *ibid* Sch 2 para 6 (as amended) (see the text and notes 11-21 *infra*) and which has not been withdrawn, whichever is the later: Sch 2 para 5(2).

9 'Disregarded service', in relation to any member of a scheme, means any period of service in qualifying judicial office during which an election under, or an election having effect as if made under, *ibid* s 13 (as amended) (see PARA 541 ante) is in force in respect of the qualifying member: Sch 2 para 1(1) (as renumbered: see note 1 *supra*).

10 *Ibid* Sch 2 para 5(1).

11 *Ibid* Sch 2 para 6(1).

12 'Occupational pension scheme' has the meaning given by the Pension Schemes Act 1993 s 1 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 741) or, in relation to Northern Ireland, the equivalent Northern Ireland legislation: see the Judicial Pensions and Retirement Act 1993 Sch 2 para 1(1) (as renumbered: see note 1 *supra*; and as amended: see note 7 *supra*).

13 *Ibid* Sch 2 para 6(2)(a). Without prejudice to the generality of the power to prescribe requirements under Sch 2 para 6(2), such requirements may provide that pension arrangements or a scheme or annuity must satisfy such requirements of the Commissioners of Inland Revenue as may be prescribed: Sch 2 para 6(3). For the prescribed requirements see the Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 5.

14 'Personal pension scheme' has the meaning given by the Pension Schemes Act 1993 s 1 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 710) or, in relation to Northern Ireland, the equivalent Northern Ireland legislation: see the Judicial Pensions and Retirement Act 1993 Sch 2 para 1 (as amended: see note 7 *supra*).

15 *Ibid* Sch 2 para 6(2)(b); and see note 13 *supra*.

16 'Authorised insurer' means: (1) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 to effect or carry out contracts of long-term insurance; or (2) an EEA firm of the kind mentioned in Sch 3 para 5(d), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to effect or carry out contracts of long-term insurance: Judicial Pensions and Retirement Act 1993 Sch 2 para 1(1) (as renumbered: see note 1 *supra*; definition substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 114(3)). This definition of 'authorised insurer' must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22, and Sch 2: Judicial Pensions and Retirement Act 1993 Sch 2 para 1(2) (added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 114(4)). See further FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84; INSURANCE.

17 Judicial Pensions and Retirement Act 1993 Sch 2 para 6(2)(c) (amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 114(5); and see note 13 *supra*).

18 Judicial Pensions and Retirement Act 1993 Sch 2 para 6(2)(d); and see note 13 *supra*.

19 *Ibid* Sch 2 para 6(4).

20 Where (1) the trustees or managers of (a) an occupational pension scheme which is not a contracted-out scheme; or (b) a personal pension scheme which is not an appropriate scheme under the Pension Schemes Act 1993 s 7 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 880), the Pension Schemes (Northern Ireland) Act 1993 s 3 or under any prescribed provision; or (c) a self-employed pension arrangement within the meaning of the Occupational Pension Schemes (Transfer Values) Regulations 1985, SI 1985/1931, reg 2D (as added) (revoked: see the Occupational Pension Schemes (Transfer Values) Regulations 1996, SI 1996/1847), the Personal Pension Schemes (Transfer Values) Regulations 1987, SI 1987/1112, reg 2A (as added

and amended) or the equivalent Northern Ireland regulations, or any other prescribed provision, are able or willing to accept a transfer payment only in respect of a qualifying member's rights other than his accrued rights to a guaranteed minimum pension or his protected rights; and (2) the member has not required the Treasury to use the portion of his cash equivalent which represents a guaranteed minimum pension or protected rights in any of the ways specified in the Judicial Pensions and Retirement Act 1993 Sch 2 para 6(2), then Sch 2 paras 5-7 (as amended) are to be read as conferring on the member an option only in respect of the reduced cash equivalent: Sch 2 para 6(6) (as amended: see note 7 supra). For these purposes, 'reduced cash equivalent' means a sum equal to the balance of the cash equivalent to which the qualifying member would be entitled if Sch 2 para 6(6) (as so amended) did not apply, after deduction of an amount sufficient for the Treasury to meet its liability in respect of the member's guaranteed minimum pension or protected rights or those of his widow, or her widower: Sch 2 para 6(7).

21 Ibid Sch 2 para 6(5).

22 Ibid Sch 2 para 8(1).

23 Ibid Sch 2 para 8(2).

24 Ibid Sch 2 para 8(3).

25 Ibid Sch 2 para 9(1).

26 Ie except in cases to which ibid Sch 2 para 6(6) (as amended) applies: see note 20 supra.

27 Ibid Sch 2 para 9(2).

28 Ibid Sch 2 para 9(3).

29 Ibid Sch 2 para 10(1).

30 Ie in a way specified in ibid Sch 2 para 6(2)(a), (b), (c) or (d): see heads (1)-(4) in the text.

31 Ibid Sch 2 para 10(2).

32 Ibid Sch 2 para 10(3).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

552 Transfers out of accrued benefits

NOTE 7--SI 1995/637 amended: SI 2005/3325.

See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

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553. Transfers into the scheme.

The following provisions apply with respect to the transfer of accrued rights into the pension scheme constituted by the Judicial Pensions and Retirement Act 1993 Part I¹ or by the provisions of that Act relating to additional benefits in respect of disregarded earnings², except with respect to the initial transfer in of a person's relevant rights³ where Part I of the 1993 Act begins to apply to him in the specified circumstances⁴. Where a member⁵ of such a scheme has asked the Lord Chancellor⁶ to accept a payment representing the cash equivalent of his accrued rights in any other qualifying scheme⁷, the Lord Chancellor may, to the extent to which it does not exceed the prescribed limit⁸, either accept the payment or any part of it or refuse to accept the payment or any part of it⁹.

A request under these provisions must be made in writing¹⁰. It must be made before the person making it has reached normal pension age¹¹ and not less than one year before he becomes entitled to a pension on retirement from his qualifying service¹². A member may, by notice in writing given to the Lord Chancellor, cancel a request so made by him at any time before it has been accepted¹³. A transferring member who withdraws an application may make another¹⁴.

Regulations made for these purposes by the Lord Chancellor with the concurrence of the Treasury¹⁵ may:

- 131 (1) prescribe limits on the amounts which the Lord Chancellor may accept¹⁶ by way of payment representing the cash equivalent of a member's accrued rights¹⁷;
- 132 (2) make provision as to the manner in which payments are to be accepted into a scheme under these provisions¹⁸;
- 133 (3) make provision as to the benefits which are to be provided to a member to reflect any such payment accepted with respect to him¹⁹; and
- 134 (4) prescribe formulae, based on tables of factors provided by the Government Actuary, to be used when performing any calculation relating to the acceptance of transfer payments or the provision of benefits²⁰.

The provisions of the Pension Schemes Act 1993 relating to transfer values²¹ and the equivalent Northern Ireland legislation do not apply in relation to the schemes to which the above provisions apply²².

1 Ie a scheme constituted by the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante.

2 Ie by *ibid* s 19: see PARA 551 ante.

3 Ie under *ibid* s 12: see PARA 538 ante.

4 *Ibid* s 23. The specified circumstances are those in s 1(1)(b), (c) or (d): see s 12(1); and PARA 538 ante at heads (2)-(4) in the text.

5 For the meaning of 'member' see PARA 552 note 1 ante.

6 Ie as the appropriate minister: see PARA 535 note 2 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 For these purposes, 'qualifying scheme' means: (1) an occupational pension scheme, a personal pension scheme, or an annuity purchased from an authorised insurer, which satisfies prescribed requirements; or (2) other prescribed pension arrangements: Judicial Pensions and Retirement Act 1993 s 23, Sch 2 para 11(3) (amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 114(6)). For the meaning of 'occupational pension scheme', 'personal pension scheme' and 'authorised insurer' see PARA 552 notes 12, 14, 16 ante. For the requirements to be met by a qualifying scheme see the Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 11.

8 For these purposes, 'the prescribed limit' means the limit prescribed by regulations made by virtue of the Judicial Pensions and Retirement Act 1993 Sch 2 para 13(a) (see head (1) in the text): Sch 2 para 11(3).

9 Ibid Sch 2 para 11(1). Where the pension credit available to be transferred into the Part I scheme is less than twice the aggregate accrued annual rate of the guaranteed minimum pension of the member at the relevant date, the transfer payment must be rejected: Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 16. For the meaning of 'guaranteed minimum pension' see PARA 552 note 7 ante. As to calculation of the pension credit see reg 14.

10 Judicial Pensions and Retirement Act 1993 Sch 2 para 11(2)(a).

11 Ibid Sch 2 para 11(2)(b). For the meaning of 'normal pension age' see PARA 552 note 4 ante.

12 Ibid Sch 2 para 11(2)(c). For the meaning of 'qualifying service' see PARA 552 note 1 ante.

13 Ibid Sch 2 para 12(1).

14 Ibid Sch 2 para 12(2).

15 See ibid Sch 2 para 2.

16 Ie under ibid Sch 2 para 11(1): see the text and note 9 supra.

17 Ibid Sch 2 para 13(a). In respect of payments into a scheme under Sch 2 para 11(1) there is no limit on the amount that the Lord Chancellor may accept into the Part I scheme or section 19 scheme: Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 10.

18 Judicial Pensions and Retirement Act 1993 Sch 2 para 13(b). Payments into the Part I scheme must be made direct from the trustees or administrators of the qualifying scheme and in no other manner: Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 12.

19 Judicial Pensions and Retirement Act 1993 Sch 2 para 13(c). The benefits to be provided to a member in respect of the transfer payment into the Part I scheme or the section 19 scheme must be (1) an annual pension payable to the member from the same date and at the same intervals as his pension under the Part I scheme; and (2) derivative benefits payable at the same intervals and to the same persons as the benefits under the Part I scheme are payable: Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 13.

20 Judicial Pensions and Retirement Act 1993 Sch 2 para 13(d). See the Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, regs 14, 15.

21 Ie the Pension Schemes Act 1993 Pt IV Ch IV (ss 93-101) (as amended): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 951 et seq.

22 See the Judicial Pensions and Retirement Act 1993 Sch 2 para 3 (as amended), cited in para 552 note 7 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

553 Transfers into the scheme

TEXT AND NOTES--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

NOTE 20--SI 1995/637 regs 14, 15 amended: SI 2005/3325.

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554. Pension credits under pension sharing arrangements.

In any case where a person ('the transferee') becomes entitled to a pension credit under the Welfare Reform and Pensions Act 1999¹ and that pension credit is derived from the rights of another person ('the transferor') under either (1) an occupational pension scheme constituted by Part I of the Judicial Pensions and Retirement Act 1993² or the provisions of the 1993 Act relating to additional benefits in respect of disregarded earnings³; or (2) any scheme in relation to which such a scheme is specified as an alternative for the statutory purposes⁴, the transferee becomes entitled to rights in respect of that pension credit⁵. The rights which are to be provided under these provisions must be so calculated as to be appropriate rights for the purposes of the 1999 Act⁶ and any regulations made by the Secretary of State for those purposes apply accordingly⁷.

The appropriate rights to be conferred on the transferee consist of a pension of an annual rate calculated in the prescribed manner⁸ payable from the later of the day on which the transferee attains the age of 65 years or the end of the implementation period⁹. Where the transferor has not received a lump sum¹⁰ before the pension sharing order was made, the appropriate rights must also include a lump sum of an amount equal to two and one-quarter times the annual rate of the pension referred to above, payable on the day on which the pension begins to be payable¹¹.

Where the transferee dies after the making of the pension sharing order but before attaining the age of 65 years, a lump sum of an amount equal to two and one-quarter times the annual rate of the pension¹² may be paid to the person (if any) nominated by the transferee for these purposes by notice in writing to the administrators of the scheme constituted by Part I of the 1993 Act or, in default of such nomination, to his personal representatives¹³.

Any pension or lump sum payable by virtue of these provisions is to be charged on and paid out of the Consolidated Fund¹⁴, or met out of money provided by Parliament, as appropriate¹⁵, as if it were a pension or lump sum under Part I of the 1993 Act, or a payment authorised by the relevant provision of that Act¹⁶, payable to the transferor in respect of the office which he held at the time of the order or agreement under which the pension credit arose¹⁷.

If the transferee, or the person nominated or personal representatives¹⁸, is aggrieved by any decision taken by the administrators of a judicial pension scheme concerning the rights to be conferred on the transferee, he has a right of appeal to the Lord Chancellor¹⁹.

The Lord Chancellor has no power to accept certain payments²⁰ for the benefit of a member of a judicial pension scheme to the extent that such a payment directly or indirectly represents a pension credit²¹.

1 Ie under the Welfare Reform and Pensions Act 1999 s 29: see SOCIAL SECURITY AND PENSIONS.

2 Ie a scheme constituted by the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante.

- 3 le a scheme constituted by *ibid* s 19: see *PARA 551 ante*.
- 4 le for the purposes of the Welfare Reform and Pensions Act 1999 s 35, Sch 5 para 2: see *SOCIAL SECURITY AND PENSIONS*.
- 5 Judicial Pensions and Retirement Act 1993 s 23A, Sch 2A para 1(1) (s 23A, Sch 2A added by the Judicial Pensions and Retirement Act 1993 (Amendment) Regulations 2000, SI 2000/2986, reg 3).
- 6 le appropriate rights for the purposes of the Welfare Reform and Pensions Act 1999 Sch 5 para 5: see *SOCIAL SECURITY AND PENSIONS*.
- 7 Judicial Pensions and Retirement Act 1993 Sch 2A para 1(2) (as added: see note 5 *supra*). Subject to this, the rights which are to be so provided must be such as may be prescribed by the Lord Chancellor (ie the appropriate minister: see *PARA 535 note 2 ante*) in regulations, which must provide for the calculation and payment of any sums payable as part of those rights: Sch 2A para 1(3) (as so added). Regulations so made may: (1) provide for the calculation of the amounts payable in such manner as may, in the particular case, be approved by a person prescribed by the regulations, or in accordance with guidance from time to time prepared by a person so prescribed; (2) include provision by reference to regulations made under the Welfare Reform and Pensions Act 1999 s 30 or Sch 5; or (3) include provision by reference to regulations made under the Judicial Pensions and Retirement Act 1993 s 23, Sch 2 para 13 (transfers in: see *PARA 553 ante*): Sch 2A para 1(4) (as so added).
- 8 The annual rate must be calculated in such manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose and so as to ensure that the value of the rights, when calculated in accordance with regulations made by the Secretary of State under the Welfare Reform and Pensions Act 1999 Sch 5 para 5(b), equals the amount of the pension credit: Judicial Pensions (Implementation of Pension Credits) Regulations 2000, SI 2000/2983, reg 4(3).
- 9 *Ibid* regs 3, 4(1). The implementation period referred to in the text is that period as determined in accordance with the Welfare Reform and Pensions Act 1999 s 34: see *SOCIAL SECURITY AND PENSIONS*.
- 10 le under the Judicial Pensions and Retirement Act 1993 s 4: see *PARA 545 ante*.
- 11 Judicial Pensions (Implementation of Pension Credits) Regulations 2000, SI 2000/2983, reg 4(2).
- 12 le calculated in accordance with *ibid* reg 4(3): see note 8 *supra*.
- 13 *Ibid* reg 5.
- 14 As to the Consolidated Fund see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) *PARA 711*.
- 15 le the Judicial Pensions and Retirement Act 1993 s 28(1) (see *PARA 537 ante*) applies: see Sch 2A para 1(5) (as added: see note 5 *supra*).
- 16 le authorised by *ibid* s 19: see *PARA 551 ante*.
- 17 *Ibid* Sch 2A para 1(5) (as added: see note 5 *supra*).
- 18 le in a case within the Judicial Pensions (Implementation of Pension Credits) Regulations 2000, SI 2000/2983, reg 5: see the text and note 13 *supra*.
- 19 *Ibid* reg 6. The Judicial Pensions and Retirement Act 1993 s 20 (see *PARA 555 post*) applies with the necessary modifications: Judicial Pensions (Implementation of Pension Credits) Regulations 2000, SI 2000/2983, reg 6.
- 20 le a payment under the Welfare Reform and Pensions Act 1999 Sch 5 para 1(3), or under the Pension Schemes Act 1993 s 95 (as amended) (see *SOCIAL SECURITY AND PENSIONS* vol 44(2) (Reissue) *PARA 954*), or any other payment: see the Judicial Pensions and Retirement Act 1993 Sch 2A para 2 (as added: see note 5 *supra*).
- 21 *Ibid* Sch 2A para 2 (as added: see note 5 *supra*).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

554 Pension credits under pension sharing arrangements

TEXT AND NOTES--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/B. THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993/(F) Appeals/555. Appeals.

(F) APPEALS

555. Appeals.

If (1) any person to whom Part I of the Judicial Pensions and Retirement Act 1993¹ applies² or has applied; or (2) the widow or widower, or any surviving dependant, of a person who served in qualifying judicial office³ but who has died; or (3) a person claiming to be such a person as is mentioned in head (1) or head (2) above or claiming to be entitled to become a person to whom that Part applies, is aggrieved by any decision⁴ taken by the administrators⁵ of a relevant pension scheme⁶ concerning the interpretation of the rules⁷ of the scheme or the exercise of any discretion under the scheme, he has a right of appeal to the Lord Chancellor⁸ against that decision⁹.

Regulations made by the Lord Chancellor¹⁰ may make provision as to the manner in which, and time within which, appeals under these provisions are to be brought¹¹.

The appellant must bring his appeal by giving a notice of appeal in writing to the Lord Chancellor¹². He must give the notice of appeal to the Lord Chancellor not later than two months after the date on which the administrators notify him of the decision against which he appeals¹³; but the Lord Chancellor may extend this time limit if he thinks it appropriate to do so in an individual case¹⁴. No later than seven days after the date of the arrival of the notice of appeal in his office, the Lord Chancellor must send a copy of that notice, together with any documents annexed to it, to the administrators¹⁵.

The Lord Chancellor may, at any time before he decides the appeal, permit an appellant to amend his grounds of appeal, request an appellant to provide further particulars of any matter referred to in his notice of appeal and request an appellant to produce documents relevant to those further particulars¹⁶. He may specify a time limit for receipt of any such further particulars or documents¹⁷ and must send them to the administrators no later than seven days after the date of their arrival in his office¹⁸.

At any time before the Lord Chancellor decides his appeal, the appellant may withdraw his appeal by giving to the Lord Chancellor a notice in writing stating that he withdraws his appeal signed by him or on his behalf¹⁹. The Lord Chancellor must notify the administrators of any such withdrawal no later than seven days after the date of its arrival in his office²⁰.

The administrators are entitled to appear and be heard on any such appeal²¹.

On deciding such an appeal, the Lord Chancellor may give to the administrators such directions as he considers necessary or expedient for implementing his decision²².

- 1 le the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante.
- 2 As to the persons to whom ibid Pt I (as amended) applies see PARA 538 ante.
- 3 As to service in qualifying judicial office see PARA 539 ante.
- 4 In the case of a person falling within head (3) in the text, the decision must relate to the question whether a person who claims to be such a person as is mentioned in head (1) or head (2) in the text is such a person, or whether a person who claims to be entitled to become a person to whom the Judicial Pensions and Retirement Act 1993 Pt I (as amended) applies is so entitled: see s 20(3)(c).
- 5 For the meaning of 'the administrators' see PARA 545 note 11 ante
- 6 'Relevant pension scheme' means any scheme constituted under or by virtue of the Judicial Pensions and Retirement Act 1993 Pt I (as amended) or s 19 (see PARA 551 ante) for the payment of pensions or other benefits: s 20(6).
- 7 'Rules', in relation to a relevant pension scheme, means the provisions of ibid Pt I (as amended) and s 19 and of any regulations or orders made under or by virtue of Pt I (as amended) or s 19: s 20(6).
- 8 le as the appropriate minister: see PARA 535 note 2 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 9 Judicial Pensions and Retirement Act 1993 s 20(1), (3).
- 10 See ibid s 20(6). As to the making of regulations generally see PARA 535 note 2 ante.
- 11 Ibid s 20(4). In the exercise of this power the Lord Chancellor has made the Judicial Pensions (Appeals) Regulations 1995, SI 1995/635, which came into force on 31 March 1995: reg 1. See further the text and notes 12-20 infra.
- 12 Ibid reg 4. The notice of appeal must state the grounds of the appeal with sufficient particulars to show why the appellant is aggrieved by the decision and the full name of the appellant and the address to be used for service on him of any documents in connection with the appeal: reg 6(1). It must be signed by or on behalf of the appellant: reg 6(2). In any case where the appellant wishes to rely on any documents for the purposes of his appeal, those documents, or a copy of them, must be attached to the notice of appeal: reg 7(1). In such a case, the Lord Chancellor may, if he thinks that it is necessary, request the appellant to send to him the original of the attached document: see reg 7(2).
- 13 Ibid reg 5(1).
- 14 Ibid reg 5(2).
- 15 Ibid reg 5(3).
- 16 Ibid reg 8(1).
- 17 Ibid reg 8(2).
- 18 Ibid reg 8(3).
- 19 Ibid reg 9(1).
- 20 Ibid reg 9(2).
- 21 Judicial Pensions and Retirement Act 1993 s 20(5).
- 22 Ibid s 20(2).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

555 Appeals

TEXT AND NOTES--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

TEXT AND NOTE 9--1993 Act s 20(3) amended: SI 2005/3325.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(A) Pensions/556. Pensions for holders of high judicial office.

C. THE JUDICIAL PENSIONS ACT 1981

(A) PENSIONS

556. Pensions for holders of high judicial office.

A holder of high judicial office to whom the Judicial Pensions Act 1981 applies¹ is entitled on retirement from that office to a pension during his life at the annual rate set out below if he retires after 15 years' relevant service or after he has attained the age of 70 years² or if, at the time of his retirement, he is disabled by permanent infirmity from the performance of the duties of his office³. For these purposes 'high judicial office' means the offices of Lord of Appeal in Ordinary⁴, judge of the Supreme Court of England and Wales⁵ other than the Lord Chancellor⁶ and judge of the Supreme Court of Northern Ireland⁷. 'Relevant service', in relation to a judge of the Supreme Court of England and Wales, means service as a Lord of Appeal in Ordinary or as any judge of the Supreme Court of England and Wales and it has a corresponding meaning in relation to Northern Ireland, while in relation to a Lord of Appeal in Ordinary it means service as such, or as a judge of the Supreme Court of England and Wales, the Court of Session in Scotland or the Supreme Court of Northern Ireland⁸.

The annual rate of the pension payable to a person retiring from any such office after 15 or more years' relevant service is one half of his last annual salary⁹ and the annual rate of the pension payable to a person retiring from any such office after less than 15 years' relevant service is (1) if the period of relevant service does not amount to six years, one quarter of his last annual salary; and (2) if the period amounts to six years or more, one quarter of that salary plus one-fortieth of that salary for each completed year of service exceeding five¹⁰.

Not more than one pension is to be paid to the same person under these provisions and the provisions set out in the next paragraph¹¹ or under these provisions, the provisions set out in the next paragraph and the Lord Chancellor's Pension Act 1832¹².

¹ As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

- 2 Judicial Pensions Act 1981 s 2(1)(a).
- 3 Ibid s 2(1)(b). For transitional provisions see s 36, Sch 2 para 1.
- 4 As to the Lords of Appeal in Ordinary see PARA 369 ante.
- 5 As to the judges of the Supreme Court see PARA 515 et seq ante, paras 602, 619, 633, 637 post.
- 6 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 7 Judicial Pensions Act 1981 s 1, Table col 1.
- 8 Ibid s 1, Table col 2.
- 9 Ibid s 2(2).
- 10 Ibid s 2(3). These provisions are apparently more generous than the pension provisions made by the Judicial Pensions and Retirement Act 1993, under which the office holder must complete 20 years' service in order to be entitled to a pension of one half of his pensionable pay: see PARA 544 ante. However, for the purposes of the Judicial Pensions and Retirement Act 1993, a person need only have held 'qualifying judicial office' for those 20 years: see PARA 539 ante. As to the persons to whom the Judicial Pensions and Retirement Act 1993 applies see PARA 538 ante.
- 11 Ie under the Judicial Pensions Act 1981 Pt I Ch I (ss 1-4) (as amended): see the text and notes 1-10 supra; and PARA 556 post.
- 12 Judicial Pensions Act 1981 s 4. As to the Lord Chancellor's Pension Act 1832 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 479.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

556 Pensions for holders of high judicial office

TEXT AND NOTE 6--Words 'other than the Lord Chancellor' omitted: Judicial Pensions Act 1981 s 1 (amended by the Constitutional Reform Act 2005 Sch 4 para 110, Sch 18 Pt 2).

TEXT AND NOTES 7, 8--1981 Act s 1, Table amended: 2005 Act s 37(1), Sch 11 para 25(2) (in force 1 October 2009: SI 2009/1604). See further 2005 Act s 37(3) (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(A) Pensions/557. Pensions for members of the higher judiciary who have held other judicial office.

557. Pensions for members of the higher judiciary who have held other judicial office.

Where a holder of high judicial office¹ who, immediately before his appointment to high judicial office, was the holder of any other of the specified judicial offices² in respect of which pensions are payable³ retires from his office having qualified, otherwise than by retirement after attaining the age of 70 years, for a pension under the provisions of the Judicial Pensions Act 1981 relating to the higher judiciary⁴, then if he so elects:

- 135 (1) the amount of the pension which may be paid to him under those provisions is to be an amount equal to the pension for which he would have been eligible if he had continued to serve in his former office until his retirement at the salary then payable to a holder of that office; and
- 136 (2) any lump sum payable in his case⁵ must be calculated as if his last annual salary were the salary payable at the date of his retirement to a holder of his former office⁶.

Where such a person dies while holding his office, and his legal personal representatives so elect, any derivative benefit⁷ payable in respect of him⁸ must be calculated as if the pension for which he would have been eligible if he had retired at the time of his death were a pension of the amount described in head (1) above, and as if his last annual salary were the salary payable at the time of his death to a holder of his former office⁹.

An election under these provisions must be made within the period of three months beginning with the retirement or death of the person by or in respect of whom it is made, and must be made in writing addressed to the Treasury¹⁰.

Not more than one pension is to be paid to the same person under these provisions and the provisions set out in the previous paragraph¹¹ or under these provisions, the provisions set out in the previous paragraph and the Lord Chancellor's Pension Act 1832¹².

1 For the meaning of 'high judicial office' see PARA 556 ante.

2 I.e. the judicial offices described in the House of Commons Disqualification Act 1975 s 1(1), Sch 1 Pt I (as amended); see PARLIAMENT vol 78 (2010) PARA 908.

3 I.e. payable in pursuance of the Judicial Pensions Act 1981 or any other public general Act or under any other enactment, scheme or arrangement approved for these purposes by the Lord Chancellor: Judicial Pensions Act 1981 s 3(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 I.e. under the Judicial Pensions Act 1981 Pt I Ch I (ss 1-4) (as amended): see the text and notes to this paragraph; and PARA 556 ante.

5 I.e. under ibid Pt II (ss 16-29) (as amended): see PARA 562 et seq post.

6 Ibid s 3(1), (2).

7 For the meaning of 'derivative benefit' see PARA 562 note 3 post.

8 See note 5 supra.

9 Judicial Pensions Act 1981 s 3(2).

10 Ibid s 3(4) (amended by the Courts and Legal Services Act 1990 s 118(1), (4)).

11 See note 4 supra.

12 Judicial Pensions Act 1981 s 4. As to the Lord Chancellor's Pension Act 1832 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 479.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

557 Pensions for members of the higher judiciary who have held other judicial office

NOTE 3--The Lord Chancellor's function under the 1981 Act s 3 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

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558. Pensions for circuit judges.

On the recommendation of the Lord Chancellor¹, a circuit judge² to whom the Judicial Pensions Act 1981 applies³ may be granted a pension:

- 137 (1) if he retires after 15 years' service⁴ and at the time of his retirement he has attained the age of 65 years; or
- 138 (2) if he vacates his office on reaching the statutory age limit⁵ or is removed from office by the Lord Chancellor on the ground of incapacity or misbehaviour⁶; or
- 139 (3) if the Lord Chancellor is satisfied by means of a medical certificate that, by reason of infirmity of mind or body, he is incapable of discharging the duties of his office, and that the incapacity is likely to be permanent⁷.

The annual rate of a pension so payable to a person retiring after not less than 15 years' service is to be one half of his last annual salary⁸ and the annual rate of a pension so payable to a person retiring after less than 15 years' service is to be six-fortieths of his last annual salary, if the period of service does not amount to five years, and, if the period of service amounts to five years or more, one quarter of that salary plus one-fortieth for each completed year of service exceeding five⁹. A pension under these provisions is payable at such intervals, not exceeding three months, as the Treasury may determine¹⁰.

If a person to whom a pension has been granted under these provisions (before he has attained the age of 72 years)¹¹ in consequence of any such incapacity as is referred to in head (3) above resumes the duty of a circuit judge, the payment of the pension must be suspended during the period of his resumed service, but at the end of that period the pension is again payable and

must be recalculated in accordance with the above provisions, and for that purpose the period of his resumed service is to be added to the period of his former service¹².

These provisions have effect subject to certain transitional provisions made by the Courts Act 1971¹³.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the appointment, salaries and allowances of circuit judges see PARAS 522-524 ante.

3 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante. For transitional provisions see the Judicial Pensions Act 1981 s 36, Sch 2 para 2 (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(c)).

4 For these purposes, 'service' means service as a circuit judge: Judicial Pensions Act 1981 s 5(5). Cf the Judicial Pensions and Retirement Act 1993 s 3(1), under which service in 'qualifying judicial office' may be aggregated; and PARAS 539, 544 ante.

5 In accordance with the Courts Act 1971 s 17 (as amended): see PARA 523 ante. The normal age limit is 70 years: see s 17(1) (as substituted); and PARA 523 ante.

6 In accordance with *ibid* s 17 (as amended): see s 17(4); and PARA 523 ante.

7 Judicial Pensions Act 1981 s 5(1).

8 *Ibid* s 5(2). Cf the Judicial Pensions and Retirement Act 1993 s 3(1), under which 20 years' service is required for a pension of one half of pensionable pay: see PARA 544 ante. See also, however, note 4 *supra*.

9 Judicial Pensions Act 1981 s 5(3).

10 *Ibid* s 5(6) (amended by the Courts and Legal Services Act 1990 s 118(1), (4)).

11 As to the Lord Chancellor's power to extend the age of retirement of a circuit judge to 75 years see PARA 535 ante.

12 Judicial Pensions Act 1981 s 5(4).

13 *Ibid* s 35. The provisions referred to in the text are the provisions of the Courts Act 1971 Sch 2 paras 5-7 (as amended): see PARA 522 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

558 Pensions for circuit judges

TEXT AND NOTES 1-12--Judicial Pensions Act 1981 s 5 further amended: Constitutional Reform Act 2005 Sch 4 para 111.

The Lord Chancellor's functions under the 1981 Act s 5, Sch 2 para 2(2) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(A) Pensions/559. Pensions for holders of other Supreme Court offices and for district judges in county courts.

559. Pensions for holders of other Supreme Court offices and for district judges in county courts.

Provision is made under the Judicial Pensions Act 1981¹ for pensions to be payable to the holders of the following offices to whom that Act applies²:

- 140 (1) master, Queen's Bench Division³;
- 141 (2) Admiralty Registrar⁴;
- 142 (3) master, Chancery Division⁵;
- 143 (4) registrar in bankruptcy of the High Court⁶;
- 144 (5) costs judge of the Supreme Court⁷;
- 145 (6) district judge of the Principal Registry of the Family Division⁸;
- 146 (7) district judge in a district registry of the High Court⁹;
- 147 (8) master of the Court of Protection¹⁰; and
- 148 (9) district judge in the county courts¹¹.

Provision is also made under that Act¹² for a pension to be payable to a person holding the former office of registrar of civil appeals¹³.

Particular provision is made with regard to persons who have held the office of Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals¹⁴. There may be paid to such persons such superannuation allowances as the Lord Chancellor¹⁵ may, with the approval of the Treasury, determine¹⁶.

A person holding one of the offices listed in heads (1) to (9) above who at the time of his appointment was employed in the civil service of the state and subject to the principal civil service pension scheme was able to elect to continue to be subject to that scheme rather than to the provisions of the Judicial Pensions Act 1981¹⁷.

A person holding one of the offices listed in heads (1) to (9) above may be granted a pension if he retires after not less than 15 years of relevant service¹⁸ and at the time of his retirement he has attained the age of 65, or if he retires after not less than two years' relevant service, and either at the time of his retirement he has attained the age of 72 years¹⁹ or the Treasury is satisfied by means of a medical certificate that he is incapable from infirmity of mind or body of discharging the duties of his office and that the infirmity is likely to be permanent²⁰. The annual rate of the pension payable under these provisions to a person retiring after not less than 20 years' relevant service must not exceed one half of his last annual salary²¹ and the annual rate of the pension so payable to a person retiring after less than 20 years' relevant service must not, if the period of relevant service amounts to less than five (but not less than two) years, exceed six-eighths of his last annual salary²². If the period of relevant service amounts to less than ten years (but not less than five), the annual rate of pension so payable must not exceed fifteen-eighths of his last annual salary plus one-eighth for each completed year of relevant service exceeding five²³, and if the period of relevant service amounts to not less than 10 years (but less than 20 years), the annual rate of pension so payable must not exceed one quarter of that salary plus two-eighths for each completed year of relevant service after the first 10 years²⁴.

A person holding one of the offices listed in heads (1) to (9) above may, on retirement in consequence of the abolition of his office, or of the reorganisation of his department, be granted a special allowance or allowances by way of compensation, not exceeding what might be granted if he retired on the ground of ill-health²⁵.

If a person holding one of the offices listed in heads (1) to (9) above is removed from his office on the ground of his inability to discharge efficiently the duties of his office, and he is ineligible for a pension under the above provisions²⁶, the Treasury may, if it thinks the special circumstances of the case justify it, grant him such a pension as the Treasury thinks just and proper, but not exceeding the amount for which the officer's length of relevant service would otherwise qualify him²⁷. Before making any such grant the Treasury must consider any representations which the officer may have submitted to it²⁸. The reasons for making any such grant, and the amount of any such grant, must be set out by the Treasury in a minute which must be laid before Parliament within 14 days after being made²⁹.

If a person to whom a pension has been granted³⁰ is appointed to an office in any public department³¹ the pension must not be paid for any period after that appointment if his annual salary in that office ('the new salary') is equal to his last annual salary in the office from which he retired when the pension was granted ('the salary before retirement')³². If the new salary is less than the salary before retirement the amount of the pension must not exceed the difference³³.

Provision is made for the distribution without a grant of representation of any small sum of money³⁴ due from a government department on the death of a person holding any of the offices listed in heads (1) to (9) above³⁵.

Provision is also made for reasonable gratuities or annual allowances to be paid by Treasury warrant to or in respect of any such person who:

- 149 (a) is injured in the actual discharge of his duty by some injury specifically attributable to the nature of his duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or
- 150 (b) is injured while in an area outside the United Kingdom for the purposes of his employment, and the injury is directly attributable to the existence in or near that area of a state of war, revolution, or serious and widespread internal disturbance, or is the direct result of deliberate acts of the local population or of sporadic political disturbances, and is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or
- 151 (c) contracts a disease to which he is exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct³⁶.

Any annual allowance granted to the officer who is injured or contracts the disease must not, together with any pension payable³⁷ and the annuity value³⁸ of any lump sum³⁹ for which he is otherwise eligible, exceed five-sixths of the annual salary of his office⁴⁰.

1 See the Judicial Pensions Act 1981 s 14, Sch 1 (as amended); and the text and notes 3-13, 17-40 *infra*. For transitional provisions see s 36, Sch 2 paras 7-9.

2 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 *ante*.

3 As to Queen's Bench masters see PARA 654 *post*.

4 As to the Admiralty Registrar see PARA 660 *post*.

5 As to Chancery masters see PARA 655 *post*.

- 6 As to registrars in bankruptcy see PARA 666 post.
- 7 As to costs judges, referred to in the legislation by their previous title of 'taxing masters', see PARA 656 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1734.
- 8 As to the district judges of the Principal Registry of the Family Division see PARA 658 post.
- 9 For the purposes of the Judicial Pensions Act 1981, the annual salary of a county court district judge who is also a district judge of the High Court is deemed to include any salary payable in respect of his services as district judge of the High Court: s 34(1) (amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)). As to district judges in county courts see PARA 530 ante, para 728 post; and as to district judges in the district registries see PARA 661 post.
- 10 As to the master of the Court of Protection see PARA 668 post.
- 11 Judicial Pensions Act 1981 Sch 1 para 1 (amended by the Supreme Court Act 1981 s 152(1), Sch 5; the Courts and Legal Services Act 1990 ss 78(3), 125(3), (7), Schs 18, 20; and by the Judicial Pensions and Retirement Act 1993 s 31(4), Sch 9). As to district judges in county courts see note 9 supra.
- 12 Ie under the Judicial Pensions Act 1981 Sch 1 (as amended): see the text and notes 13-40 infra.
- 13 The office of registrar of civil appeals was abolished by the Access to Justice Act 1999 s 70. As to the Head of the Civil Appeals Office see PARA 670 post.
- 14 As to the office of Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals see PARAS 654, 657 post.
- 15 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 16 Judicial Pensions Act 1981 s 13A (added by the Courts and Legal Services Act 1990 s 78(2)).
- 17 See the Judicial Pensions Act 1981 Sch 1 para 3. As to the principal civil service pension scheme see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 576.
- 18 For these purposes, 'relevant service' in relation to any office of the Supreme Court listed in heads (1)-(8) in the text means service in that or any other office of the Supreme Court so listed, or as president of the Transport Tribunal (to whom ibid Sch 1 (as amended) also applies: see Sch 1 para 1); and 'relevant service', in relation to the office of county court district judge, means service in that office: Sch 1 para 2(1), (2) (amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)).
- 19 As to the Lord Chancellor's power to extend certain retirement dates up to the age of 75 years see PARA 535 ante.
- 20 Judicial Pensions Act 1981 Sch 1 para 4(1) (Sch 1 para 4 amended by the Supreme Court Act 1981 s 152(1), (4), Schs 5, 7; and by the Courts and Legal Services Act 1990 ss 83(1)(c), (4), 118(1), (4)(b)).
- 21 Judicial Pensions Act 1981 Sch 1 para 4(3). This is the same length of service as would be required under the Judicial Pensions and Retirement Act 1993 s 3(1) for a pension of half pensionable pay: see PARA 544 ante. Any reference in the Judicial Pensions Act 1981 Sch 1 (as amended) to the salary of an office is, as regards any period in respect of which any temporary abatement of salary of that office has been made for the purpose of effecting economy in national expenditure, a reference to the salary which would have been payable to the holder of the office but for that abatement: Sch 1 para 18. An officer to whom Sch 1 (as amended) applies is not entitled to reckon the same period of time both for the purpose of a pension or lump sum under Sch 1 Pt II (paras 1-14) (as amended) and for the purpose of naval, military or air force non-effective pay: Sch 1 para 19.
- 22 Ibid Sch 1 para 4(4)(a) (as substituted: see note 20 supra).
- 23 Ibid Sch 1 para 4(4)(aa) (as added: see note 20 supra).
- 24 Ibid Sch 1 para 4(4)(b).
- 25 Ibid Sch 1 para 7. As to lump sums payable on ill-health retirement see Sch 1 para 5; and PARA 563 post.
- 26 Ie under ibid Sch 1 para 4 (as amended): see the text and notes 20-24 supra.
- 27 Ibid Sch 1 para 8(1) (Sch 1 paras 8, 21 amended by the Courts and Legal Services Act 1990 s 118(1), (4), (7)). The Treasury may, to such extent and subject to such conditions as it thinks fit, delegate to any minister or

officer of the Crown any power of granting a pension or other benefit under the Judicial Pensions Act 1981 Sch 1 (as amended): Sch 1 para 21 (as so amended).

28 Ibid Sch 1 para 8(2) (as amended: see note 27 supra).

29 Ibid Sch 1 para 8(3) (as amended: see note 27 supra).

30 Ie under ibid Sch 1 para 4 (as amended) or Sch 1 para 7: see the text and notes 20-25 supra.

31 This reference to an office in a public department includes a reference to employment in any body or institution listed in the Superannuation Act 1972 s 1, Sch 1 (as amended), or to an office so listed: Judicial Pensions Act 1981 Sch 1 para 9(3).

32 Ibid Sch 1 para 9(1). In applying Sch 1 para 9 to a pension part of which is surrendered under Sch 1 para 10 (as amended: see PARA 569 post) the salary before retirement, as defined in Sch 1 para 9(1), must be treated as reduced by the annual amount so surrendered (Sch 1 para 12(2)); and in applying Sch 1 para 9 to a pension part of which is surrendered under Sch 1 para 14 (as amended: see PARA 569 post) in respect of any period after the marriage the salary before retirement, as so defined, must be treated as reduced by the annual amount so surrendered (Sch 1 para 14(6)).

33 Ibid Sch 1 para 9(2).

34 Ie not exceeding £5,000: see the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539, art 3.

35 See the Judicial Pensions Act 1981 Sch 1 para 20 (as amended).

36 See ibid Sch 1 Pt III (paras 15-17) (as amended). As to the dependants who may be granted such a gratuity or annual allowance on the officer's death see Sch 1 para 15(2), (5) (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(b), Sch 18 para 33).

37 Ie payable under the Judicial Pensions Act 1981 Sch 1 para 4 (as amended): see the text and notes 20-24 supra.

38 As to calculation of the annuity value see ibid Sch 1 para 16(2), (3).

39 Ie any lump sum under ibid s 17(1) or Sch 1 Pt II (as amended): see PARAS 562-563 post.

40 Ibid Sch 1 para 16(1).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

559 Pensions for holders of other [Senior Courts] offices and for district judges in county courts

TEXT AND NOTES--In 1981 Act Sch 1 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 25(4) (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTE 10--Reference to a master of the Court of Protection omitted except in the case of a person holding that office immediately before the commencement of the Mental Capacity Act 2005 Sch 6 para 27 (ie 1 October 2007: see SI 2007/1897) or who

had previously retired from that office or died: 1981 Act Sch 1 para 1 (amended by 2005 Act Sch 6 para 27).

NOTE 13--1999 Act s 70 repealed: Statute Law (Repeals) Act 2004.

NOTES 16, 17--The Lord Chancellor's functions under the 1981 Act s 13A, Sch 1 para 3(3) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 36--1981 Act Sch 1 para 15(2) further amended: SI 2005/3325.

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560. Pensions for holders of certain other offices.

The Judicial Pensions Act 1981 makes provision with respect to the holders of certain offices not within the Supreme Court¹ or the county courts² and not all of which are relevant to this title. These provisions are noted here for convenient reference.

The provisions set out in the previous paragraph³ apply to the President of the Transport Tribunal⁴. Particular provision is made with regard to holders of the former office of stipendiary magistrate⁵ (now the office of district judge, magistrates' courts)⁶, the office of Judge Advocate General⁷, president or other member of the Lands Tribunal⁸, president of pension appeal tribunals⁹, president or chairman of employment tribunals¹⁰, and social security commissioner¹¹. Holders of these offices, may, however, be persons to whom the Judicial Pensions and Retirement Act 1993 applies since they are all qualifying judicial offices for the purposes of that Act¹².

1 As to the Supreme Court of England and Wales see PARA 601 post.

2 As to the county courts see PARA 701 et seq post.

3 See PARA 559 ante.

4 See the Judicial Pensions Act 1981 s 14, Sch 1 para 1. As to the Transport Tribunal see PARA 813 post; and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 253-258.

5 See *ibid* s 7 (amended by the Courts and Legal Services Act 1990 ss 83(1)(a), (2), 118(1), (4)(a)).

6 See MAGISTRATES.

7 See the Judicial Pensions Act 1981 ss 8, 9 (amended by the Courts and Legal Services Act 1990 ss 83(1)(b), (3), 118(1), (4)(a)). As to the Judge Advocate General see PARA 801 post; and ARMED FORCES.

8 See the Judicial Pensions Act 1981 s 10 (amended by the Courts and Legal Services Act 1990 s 118(1), (2)). As to the Lands Tribunal see PARA 812 post; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

9 See the Judicial Pensions Act 1981 s 11 (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(a)). As to the pensions appeal tribunals established under the Pensions Appeal Tribunals Act 1943 see PARA 815 post; and WAR AND ARMED CONFLICT vol 49(2) (2005 Reissue) PARA 624.

10 See the Judicial Pensions Act 1981 s 12 (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(a)); the Employment Tribunals Act 1996 s 43, Sch 1 para 6; and the Employment Rights (Dispute Resolution) Act 1998 s 1(2)). As to employment tribunals see EMPLOYMENT vol 41 (2009) PARA 1363 et seq.

11 See the Judicial Pensions Act 1981 s 13 (amended by the Courts and Legal Services Act 1990 s 118(1), (4) (a); and by the Transfer of Functions (Social Security Commissioners) Order 1984, SI 1984/1818, arts 2(a), 3). As to social security commissioners see PARA 818 post; and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 362 et seq.

12 See PARAS 538-539 ante. As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

560 Pensions for holders of certain other offices

TEXT AND NOTE 10--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Judicial Pensions Act 1981 s 10 amended to refer only to the Lands Tribunal for Scotland: SI 2009/1307.

NOTES 5, 8, 9, 11--The Lord Chancellor's functions under the 1981 Act ss 7, 10, 11, 13 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTES 5, 11--Judicial Pensions Act 1981 ss 7, 13 further amended: Constitutional Reform Act 2005 Sch 4 paras 112, 1133.

NOTE 11--Judicial Pensions Act 1981 s 13 further amended: SI 2008/2833.

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561. Election for membership of personal pension scheme.

A person who is eligible for a pension under the Judicial Pensions Act 1981¹ in any judicial office² is deemed while in judicial office to be a member of the relevant judicial pension scheme³ except during such time as an election under the following provisions is in force in respect of him⁴. While in such office he is entitled at any time to become a member of a personal pension scheme⁵ by serving on the Lord Chancellor⁶ a written notice of election, identifying the personal pension scheme, to take effect on a date not less than three months after the date when it was served⁷.

An election does not affect its maker's eligibility for a pension which accrued under any judicial pension scheme before that election came into force⁸. While an election remains in force in

respect of a person, his service is not to be counted as service or relevant service⁹ in computing the pension for which he is eligible under any judicial pension scheme¹⁰.

At any time after a person has made an election and while he continues to hold judicial office, he may make a written application to the Lord Chancellor requesting admission to membership of the judicial pension scheme relevant to the judicial office which he holds¹¹. The Lord Chancellor may, if satisfied that the applicant is in good health¹², admit him to the relevant judicial pension scheme on a date not less than three months after the date on which the application was served and, upon the date of the applicant's admission to the relevant judicial pension scheme, his election ceases to be in force¹³. The Lord Chancellor must notify an applicant of his decision in writing within three months after the date on which the application was served¹⁴.

Subject to the above provisions, an election is irrevocable and does not cease to be in force by reason only of a person becoming the holder of a judicial office different from the one which he held when he made the election¹⁵.

1 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

2 For these purposes, 'judicial office' means one of the several offices referred to in the Judicial Pensions Act 1981 ss 1, 5, 6, 7, 8, 10, 11, 12, 13, 14, Sch 1 (as amended): see PARA 556 et seq ante.

3 'Judicial pension scheme' means the occupational pension scheme constituted by the Judicial Pensions Act 1981 to provide personal pensions and derivative benefits to persons in any of the judicial offices and their widows and children, and 'relevant judicial pension scheme' has a corresponding meaning: s 14A(2) (s 14A added by the Judicial Pensions (Personal Pension Option) Regulations 1988, SI 1988/1417, reg 3, Schedule).

4 Judicial Pensions Act 1981 s 14A(1), (3)(a) (as added: see note 3 supra).

5 'Personal pension scheme' means a scheme in respect of which there is in force a current appropriate scheme certificate issued in accordance with the Pension Schemes Act 1993 s 7 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 880) or (in the case of judicial office held in Northern Ireland), in accordance with the corresponding Northern Ireland legislation: Judicial Pensions Act 1981 s 14A(2) (as added: see note 3 supra; definition amended by the Pensions Act 1995 s 151, Sch 5 para 9; and by the Pensions (Northern Ireland) Order 1995, SI 1995/3213, art 147, Sch 3 para 6).

6 Ie 'the minister': see the Judicial Pensions Act 1981 s 14A(2) (as added: see note 3 supra). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Ibid s 14A(3)(b) (as added: see note 3 supra).

8 Ibid s 14A(8) (as added: see note 3 supra).

9 For the meaning of 'service' in relation to circuit judges see PARA 558 note 4 ante; and for the meaning of 'relevant service' in relation to persons holding high judicial office see PARA 556 ante.

10 Judicial Pensions Act 1981 s 14A(9) (as added: see note 3 supra).

11 Ibid s 14A(4)(a) (as added: see note 3 supra).

12 An applicant under ibid s 14A(4) (as added: see note 3 supra) must supply such evidence relating to his health as the Lord Chancellor may reasonably require and must submit to any medical examination reasonably specified by the Lord Chancellor: s 14A(5) (as added: see note 3 supra).

13 Ibid s 14A(4)(b), (c) (as added: see note 3 supra).

14 Ibid s 14A(6) (as added: see note 3 supra).

15 Ibid s 14A(7) (as added: see note 3 supra).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

561 Election for membership of personal pension scheme

TEXT AND NOTES--The Lord Chancellor's functions under the 1981 Act s 14A are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 3--Definition of 'judicial pension schemes' in 1981 Act s 14A(2) amended: SI 2005/3325.

TEXT AND NOTES 5-7--He is now entitled at any time to serve on the minister a written notice of election not to be a member of the relevant judicial pension scheme, to take effect on a date not less than one month after the date on which it was served: 1981 Act s 14A(3)(b) (substituted by SI 2003/2916).

NOTE 5--Definition of 'personal pension scheme' omitted: 1981 Act s 14A(2) (amended by SI 2003/2916).

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(B) DERIVATIVE BENEFITS

562. Lump sum on retirement or death after service in judicial office.

Where a person on retirement becomes eligible for a pension under the Judicial Pensions Act 1981¹ for service in any judicial office², he may be granted a lump sum equal to twice the annual amount of that pension³.

Where a person was serving in any judicial office at the time of his death and, if he had then retired on the ground of permanent infirmity, he would have become eligible for a pension for that service, his legal personal representatives may be granted a lump sum equal to twice the annual amount of the pension for which he would have been so eligible, or his last annual salary, whichever is the greater⁴.

Where a person on retirement becomes eligible for a pension for service in any judicial office but dies so soon after that the sums paid or payable to him on account of that pension plus an amount equal to twice the annual amount of that pension fall short of his last annual salary for such service, his legal personal representatives may be granted a lump sum equal to the deficiency⁵.

The grant of a lump sum conditional on eligibility for a pension requiring the recommendation to the Treasury or any minister of the Crown requires the like recommendation⁶.

1 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante. As to pensions under the 1981 Act see PARA 556 et seq ante.

2 For these purposes, 'judicial office' means an office listed below, and 'relevant service', in relation to a pension for service in a judicial office or in relation to a related benefit or contribution, means the kind of service, under one or more appointments, listed below against that judicial office: Judicial Pensions Act 1981 s 16, Table cols 1, 2 (amended by the Employment Rights (Dispute) Resolution) Act 1998 s 15, Sch 1 para 4). Those offices and kinds of service are: (1) Lord Chancellor, and service as such in the first or any subsequent term of office; (2) Lord of Appeal in Ordinary, and service as such or as a judge of the Supreme Court, the Court of Session or the Supreme Court of Northern Ireland; (3) judge of the Supreme Court, and service as such or as a Lord of Appeal in Ordinary; (4) in Scotland, judge of the Court of Session and service as such or as a Lord of Appeal in Ordinary; (5) judge of the Supreme Court of Northern Ireland, and service as such or as a Lord of Appeal in Ordinary; (6) circuit judge and service as such; (7) in Scotland, sheriff principal or salaried sheriff in Scotland and pensionable service as a sheriff in Scotland; (8) stipendiary magistrate (now district judge (magistrates' courts): see MAGISTRATES), and service as such; (9) Judge Advocate General who has duly elected that the Judicial Pensions Act 1981 s 9 (as amended: see PARA 560 ante) is to apply to him, and service as such; (10) member of the Lands Tribunal or the Lands Tribunal for Scotland, and service as a member of either of those tribunals; (11) Chairman of the Scottish Land Court, and service as such; (12) any office pensionable under s 12 (as amended) (employment tribunals: see PARA 560 ante), and relevant service as defined by s 12(5) (as amended); (13) Social Security Commissioner, and salaried service as such and any other service which under s 13(4)(b) (as amended) counts as service as a commissioner; (14) any office in Sch 1 para 1 (as amended) (see PARA 559 ante), except where under Sch 1 para 3 (see PARA 559 ante) Pt II (ss 16-29) (as amended) does not apply, and relevant service as defined in Sch 1 para 2 (see PARA 559 note 18 ante) in relation to the office: s 16 (as so amended). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq; as to Lords of Appeal in Ordinary see PARA 369 ante; as to judges of the Supreme Court see PARA 515 ante, paras 602, 619, 633, 637 post; and as to circuit judges see PARA 521 et seq ante. In relation to the Lord Chancellor, any reference in the Judicial Pensions Act 1981 Pt II (ss 16-29) (as amended) to retirement is to be taken as a reference to resignation of office: s 26. Not all the offices listed supra are offices in the Supreme Court or county courts, and of those that are not, not all relevant to this title, but they are included for convenient reference. For transitional provisions in relation to certain abolished offices see s 36, Sch 2 para 6.

3 Ibid s 17(1). For the purpose of the calculation of any derivative benefit under Pt II (ss 16-29) (as amended), in respect of a person who is eligible for a pension for service in any judicial office, there must be left out of account any period of service during which an election under s 14A (as added: see PARA 561 ante) was in force in respect of that person: s 16A (added by the Judicial Pensions (Personal Pension Option) Regulations 1988, SI 1988/1417, reg 3, Schedule). 'Derivative benefit' means any lump sum under the Judicial Pensions Act 1981 Pt II (as amended) or any widow's, widower's or children's pension: s 16 (definition amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 26). For transitional provisions allowing certain persons to elect against derivative benefits see the Judicial Pensions Act 1981 s 36, Sch 2 paras 12-18 (as amended).

4 Ibid s 17(2). In relation to any office pensionable under s 12 (as amended) (employment tribunals: see PARA 560 ante), any reference in s 17 (as amended) to last annual salary is a reference to last annual remuneration apart from any allowances: s 17(4) (amended by the Employment Rights (Dispute Resolution) Act 1998 s 15, Sch 1 para 5).

5 Judicial Pensions Act 1981 s 17(3).

6 Ibid s 29 (amended by the Courts and Legal Services Act 1990 ss 118(1), (3), 125(3), Sch 18 para 30(a)).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

562 Lump sum on retirement or death after service in judicial office

NOTE 2--1981 Act s 16, Table further amended: Constitutional Reform Act 2005 s 37(1), Sch 11 para 25(3) (in force 1 October 2009: SI 2009/1604). See further 2005 Act s 37(3) (in force 1 October 2009: SI 2009/1604).

In Head (10), the Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Judicial Pensions Act 1981 s 16, Table, cols 1, 2 amended to refer only to the Lands Tribunal for Scotland: SI 2009/1307.

NOTE 3--Definition of 'derivative' further amended: 1981 Act s 16 (Civil Partnership (Judicial Pensions and Church Pensions, etc) Order 2005, SI 2005/3325.

TEXT AND NOTE 6--1981 Act s 29 further amended: SI 2005/3325.

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563. Lump sums for certain officers not otherwise eligible for them.

An officer holding one of the specified offices¹ who retires on the ground of ill-health, and who is not eligible for a lump sum under Part II of the Judicial Pensions Act 1981², may be granted a lump sum not exceeding five-sixtieths of his last annual salary³, if his relevant service⁴ is less than two years, or, if his relevant service is not less than two years, not exceeding seven-sixtieths of his last annual salary for each completed year of relevant service⁵.

An officer holding one of those offices who retires after not less than two years' relevant service, otherwise than on the ground of ill-health, and who has attained the age of 60 years but is not eligible for a lump sum under Part II of the 1981 Act, may be granted a lump sum not exceeding two-sixtieths of his last annual salary for each completed year of relevant service⁶.

1 Ie an officer to whom the Judicial Pensions Act 1981 s 14, Sch 1 (as amended) applies: see PARA 559 ante. As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

2 Ie a lump sum under the Judicial Pensions Act 1981 Pt II (ss 16-29) (as amended): see s 17 (as amended); and PARA 562 ante.

3 For the construction of this reference to salary see PARA 559 note 21 ante.

4 For the meaning of 'relevant service' see PARA 559 note 18 ante.

5 Judicial Pensions Act 1981 Sch 1 para 5.

6 Ibid Sch 1 para 6.

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501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(B) Derivative Benefits/564. Widows', widowers' and children's pensions; general conditions of grant.

564. Widows', widowers' and children's pensions; general conditions of grant.

On the death of a person ('the deceased') who had become eligible for a pension under the Judicial Pensions Act 1981¹ for service in any judicial office², or who was serving in any judicial office at the time of his or her death and would, if he or she had then retired on the ground of permanent infirmity, have become eligible for a pension for that service, there may be granted in respect of the deceased's service:

- 152 (1) where the deceased leaves a widow or widower, a pension to that widow or widower (a 'widow's pension' or 'widower's pension')³; and
- 153 (2) where the deceased had a wife or husband at any time during his or her relevant service (whether or not the marriage continued until the deceased's death and whether or not a widow's pension or widower's pension is or can be granted), a pension for the benefit of the children of the marriage and of children adopted by the deceased during the marriage (a 'children's pension')⁴.

If the Treasury is satisfied that a person ('the child') excluded from head (2) above because adopted after the termination of the marriage was before the termination of the marriage wholly or mainly dependent on the deceased person, and that the deceased person had before the termination of the marriage formed the intention of adopting the child, the Treasury may direct that that exclusion is not to apply to the child⁵.

Where a marriage which is voidable, but not void from the beginning, is declared to be null by any court of competent jurisdiction, the same results follow under Part II of the 1981 Act as would have followed thereunder if the marriage had not been voidable and had been dissolved at the date of the declaration of nullity⁶.

The grant of a widow's, widower's or children's pension conditional on eligibility for a pension requiring the recommendation to the Treasury or any minister of the Crown requires the like recommendation⁷.

¹ As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

² As to service in judicial office for these purposes see PARA 562 note 2 ante.

³ Transitional provision is made with regard to widowers' pensions: see the Judicial Pensions Act 1981 s 18A(2), Sch 2 Pt IV (as added); and PARA 565 post.

4 Ibid ss 18(1), 18A(1) (s 18(1) amended by the Adoption (Northern Ireland) Order 1987, SI 1987/2203, Sch 5 Pt I; the Judicial Pensions Act 1981 s 18A added by the Courts and Legal Services Act 1990 s 79(1)). As to widows' and widowers' pensions see PARA 565 post; and as to children's pensions see PARA 566 post.

5 Judicial Pensions Act 1981 s 18(2) (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(a)).

6 Judicial Pensions Act 1981 s 28. As to annulment of marriage, and the distinction between void and voidable marriages, see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 320. As to pension sharing on divorce see PARA 573 post; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW; SOCIAL SECURITY AND PENSIONS.

7 Ibid s 29 (amended by the Courts and Legal Services Act 1990 ss 118(1), (3), 125(3), Sch 18 para 30(a)).

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501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

564 Widows', widowers' and children's pensions; general conditions of grant

TEXT AND NOTES 3-5--1981 Act s 18 further amended, s 18A amended: SI 2005/3325.

NOTE 3--See also 1981 Act Sch 2 Pt 5 (added by SI 2005/3325) (surviving civil partners' pensions).

TEXT AND NOTE 6--1981 Act s 28 substituted: SI 2005/3325.

TEXT AND NOTE 7--1981 Act s 29 further amended: SI 2005/3325.

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565. Widows' and widowers' pensions.

No widow's or widower's pension may be granted¹ under the Judicial Pensions Act 1981² if the marriage with the deceased³ took place after he or she retired from relevant service⁴. No widower's pension is payable in respect of a member who retired on or before 1 January 1992⁵.

The annual amount of a widow's or widower's pension may be one half of the annual amount of the personal pension (that is, the pension eligibility for which is a condition of its grant)⁶. Such a pension comes to an end on the death of the widow or widower⁷.

Where a widow's or widower's pension is payable the Treasury may, on or at any time after the remarriage of the widow or widower, direct that it shall cease to be payable⁸ and may, where such a direction has been given, at any time direct that payment of the pension is to be resumed⁹.

- 1 As to the general conditions of grant see PARA 564 ante.
- 2 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.
- 3 For the meaning of 'the deceased' see PARA 564 ante.
- 4 Judicial Pensions Act 1981 s 19(1) (s 19 substituted by the Courts and Legal Services Act 1990 s 80).
- 5 Judicial Pensions Act 1981 s 18A(2), Sch 2 para 25 (s 18A, Sch 2 Pt IV (paras 24-28) added by the Courts and Legal Services Act 1990 s 79(1), (2), Sch 12); Courts and Legal Services Act 1990 (Commencement No 7) Order 1991, SI 1991/2730, art 2, Schedule. A person who retired on or after 7 December 1989 but before 1 January 1992 could, however, opt for her husband to be entitled to a widowers' pension at her death, provided she did so before the end of the period of six months beginning with 1 January 1992: see the Judicial Pensions Act 1981 Sch 2, paras 14, 26 (as so added). Similarly, in respect of a person who held judicial office before 1 January 1992 and continued in office after that date, no widower's pension would be payable unless she made an option before the end of that six-month period: see Sch 2 para 27 (as so added).
- 6 Ibid s 19(5) (as substituted: see note 4 supra). For these purposes, 'the personal pension', in relation to any derivative benefit or contribution to the cost of a derivative benefit (the 'related' derivative benefit or contribution) means the pension eligibility for which is a condition of the granting of the derivative benefit: s 16. Cf the meaning of 'personal pension' for the purposes of election for membership of a personal, as opposed to a judicial, pension scheme: see PARA 561 ante. For the meaning of 'derivative benefit' see PARA 562 note 3 ante.
- 7 Ibid s 19(2) (as substituted: see note 4 supra).
- 8 Ibid s 19(3) (as substituted: see note 4 supra).
- 9 Ibid s 19(4) (as substituted: see note 4 supra).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

565 Widows' and widowers' pensions

TEXT AND NOTES--1981 Act ss 18A, 19 amended: SI 2005/3325.

NOTE 5--See also 1981 Act Sch 2 Pt 5 (added by SI 2005/3325) (surviving civil partners' pensions).

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566. Children's pensions.

A children's pension may be granted under the Judicial Pensions Act 1981¹ if, and be paid so long as and whenever, there are persons for whose benefit it can enure². Such persons are, where the deceased³ had a wife or husband at any time during his or her relevant service⁴, the children of the marriage and, if the Treasury so directs where the statutory conditions are satisfied, an adopted child adopted after the termination of the marriage⁵, who are for the time being in their period of childhood and full-time education⁶. A children's pension cannot, however, enure for the benefit of a person conceived after the end of the deceased's relevant service⁷ or for the benefit of any person who was adopted by the deceased after the end of his or her relevant service⁸; but if the Treasury is satisfied that a person ('the child') who was so adopted was before the end of the relevant service wholly or mainly dependent on the deceased person, and that the deceased person had, before the termination of the relevant service, formed the intention of adopting the child, the Treasury may direct that this exclusion is not to apply to the child⁹.

A children's pension cannot enure for the benefit of a female person who at the time of the death of the deceased was married and if, after the death of the deceased, a female person marries, she thereupon ceases to be a person for whose benefit a children's pension can enure¹⁰.

Only one children's pension may be granted in respect of the service of any one person, but the rate of the pension may vary according to the number of persons for whose benefit it can for the time being enure¹¹. The pension must be paid to such person or persons as the Treasury may from time to time direct, and different parts of it may be directed to be paid to different persons¹². The person to whom all or any part of the pension is paid must apply the sum paid to him, without distinction, for the benefit of all the persons for whose benefit the pension can for the time being enure or for the benefit of such of them as the Treasury from time to time directs¹³.

Where the deceased leaves no widow or widower and, if he or she leaves a widow or widower, after his or her death, the annual amount of a children's pension may amount to two-thirds of the annual amount of the personal pension (that is, the pension eligibility for which is a condition of its grant)¹⁴, while the persons for whose benefit it can enure are two or more in number¹⁵. While there is only one such person, the annual amount of a children's pension may amount to one-third of the annual amount of the personal pension¹⁶. Where the deceased leaves a widow or widower, the annual amount of a children's pension during her or his life may amount to one half the annual amount of the personal pension, while the persons for whose benefit it can enure are two or more in number, and, while there is only one such person, may amount to one quarter of the annual amount of the personal pension¹⁷.

Notwithstanding anything in the above provisions¹⁸, where the deceased leaves a widow or widower who remarries, no children's pension is payable as respects any period when she has a husband or he has a wife unless the Treasury specially directs that such a pension shall be so payable¹⁹. If the Treasury does specially so direct, it may, if it thinks fit, further direct that the annual amount of the children's pension is to be the amount that would be payable if that widow or widower were dead²⁰ as respects any such period, notwithstanding that the widow or widower is alive²¹.

1 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante. As to the general conditions for the grant of a children's pension see PARA 564 ante.

2 Judicial Pensions Act 1981 s 20(1).

3 For the meaning of 'the deceased' see PARA 564 ante.

4 For the meaning of 'relevant service' see PARA 562 note 2 ante.

5 See the Judicial Pensions Act 1981 s 18(2) (as amended); and PARA 564 ante.

6 Ibid s 20(2), applying s 18(1) (as amended): see PARA 564 ante. A person is deemed for these purposes to be in his period of childhood and full-time education while either (1) he is under the age of 16; or (2) he is receiving full-time instruction at any university, college, school or other educational establishment; or (3) he is undergoing training by any person ('the employer') for any trade, profession or vocation in such circumstances that he is required to devote the whole of his time to the training for a period of not less than two years, and while he is undergoing the training, the emoluments receivable by him, or payable by the employer in respect of him, do not exceed the maximum allowable remuneration, exclusive of any emoluments receivable or payable by way of return of any premium paid in respect of the training: s 21(1) (s 21(1) amended and s 21(3A) added by the Judicial Pensions and Retirement Act 1993 s 24, Sch 3 para 1). For the purposes of head (3) supra, 'emoluments' means any salary, fees, wages, perquisites or profits or gains whatsoever, and includes the value of free board, lodging or clothing, and, where a premium has been paid in respect of the training of a person, all emoluments at any time receivable by him, or payable by the employer in respect of him, are deemed to be receivable or payable by way of return of the premium, unless and except to the extent that the amount thereof exceeds in the aggregate the amount of the premium: Judicial Pensions Act 1981 s 21(3). For those purposes, the 'maximum allowable remuneration' at any time is an annual rate (£1,614 a year, at the passing of the Judicial Pensions and Retirement Act 1993, ie at 29 March 1993) equal to that at which a pension of £250 a year first awarded under the principal civil service pension scheme on 1 June 1972, and increased from time to time by the amount of increase that would be applied under the Pensions (Increase) Act 1971 to such a pension, would (as so increased) be payable at that time, rounding any resulting fraction of £1 up to the next whole £1: Judicial Pensions Act 1981 s 21(3A) (as so added). A person is not deemed for the purposes s 21 (as amended) to satisfy the conditions specified in head (2) or head (3) supra unless there has up till then been no time since he attained the age of when he did not satisfy one or other of those conditions: s 21(2). As respects any period during which neither of the conditions so specified is satisfied in relation to a person, the Treasury may, if it thinks fit, and is satisfied that that person's full-time education ought not to be regarded as completed, direct either that that period shall be ignored for the purposes of s 21(2) or that that period shall be so ignored and shall also be treated as part of his period of childhood and full-time education for all the other purposes of s 20 (as amended) (see the text and notes 1-5 supra, 7-10 infra): s 21(4) (amended by the Courts and Legal Services Act 1990 s 118(1), (5)). As to the principal civil service pension scheme see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 576.

7 Judicial Pensions Act 1981 s 20(3).

8 Ibid s 20(4).

9 Ibid s 20(4) proviso (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(a)).

10 Judicial Pensions Act 1981 s 20(5).

11 Ibid s 22(1)(a).

12 Ibid s 22(1)(b) (s 22(1), (2), (3), (4) amended by the Courts and Legal Services Act 1990 s 118(1), (4)(a), (6), Sch 18 para 27).

13 Judicial Pensions Act 1981 s 22(1)(c) (as amended: see note 12 supra).

14 For the meaning of 'the personal pension' for these purposes see PARA 565 note 6 ante. Cf the meaning of 'personal pension' for the purposes of election for membership of a personal, as opposed to a judicial, pension scheme: see PARA 561 ante.

15 Judicial Pensions Act 1981 s 22(2)(a) (as amended: see note 12 supra).

16 Ibid s 22(2)(b) (as amended: see note 12 supra).

17 Ibid s 22(3) (as amended: see note 12 supra).

18 Ie anything in ibid s 22 (as amended): see the text and notes 11-17 supra.

19 Ibid s 22(4) (as amended): see note 12 supra).

20 Ie the Treasury may direct that ibid s 22(2) (as amended) is to apply: see the text and notes 15-16 supra.

21 Ibid s 22(4) (as amended: see note 12 supra).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

566 Children's pensions

TEXT AND NOTES--1981 Act ss 20, 22 further amended: SI 2005/3325.

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567. Contribution towards the cost of widows', widowers' and children's pensions.

Such contribution as may be prescribed by regulations made for these purposes¹ must be made towards the cost of the liability for any widow's, widower's or children's pension or pensions under the Judicial Pensions Act 1981² in respect of a person's relevant service³. No contribution must be made by a person for any period of service during which an election for membership of a personal pension scheme⁴ is in force in respect of him⁵.

The prescribed contributions must be in the form either of a reduction of the lump sum⁶ payable in respect of the relevant service or deductions from the salary payable in respect of the relevant service, or partly in one of those forms and partly in the other⁷.

1 Regulations for these purposes may be made, with the concurrence of the Treasury, by the Lord Chancellor, and must be made by statutory instrument subject to annulment pursuant to a resolution of either House of Parliament: Judicial Pensions Act 1981 s 23(4), (5) (s 23(1), (1A), (4) amended by the Courts and Legal Services Act 1990 ss 118(1), (4)(a), Sch 18 para 28). Such regulations may make provision for consequential and incidental matters, including provision excluding or modifying the operation of the Judicial Pensions Act 1981 or any enactment passed before 18 April 1973; and in particular any regulations providing for contributions by deduction from salary may make consequential provision as to any enactment referring or relating to lump sums payable under Pt II (ss 16-29) (as amended) (see PARA 562 et seq ante): s 23(3). In the exercise of this power the Lord Chancellor has made the Judicial Pensions (Widows' and Children's Benefits) Regulations 1981, SI 1981/375 (amended by SI 1991/2731); and the Judicial Pensions (Widowers' and Children's Benefits) Regulations 1991, SI 1991/2731. These regulations are not set out in this title because of their technical nature and the limited number of persons to whom they will now apply. For the equivalent provisions under the Judicial Pensions and Retirement Act 1993 see PARA 548 ante.

2 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

3 Judicial Pensions Act 1981 s 23(1) (as amended): see note 1 supra. For the meaning of 'relevant service' see PARA 562 note 2 ante.

4 I.e. an election under *ibid* s 14A (as added): see PARA 561 ante.

5 *Ibid* s 12(1A) (added by the Judicial Pensions (Personal Pension Option) Regulations 1988, SI 1988/1417, reg 3, Schedule; and as amended: see note 1 supra).

6 As to payment of a lump sum on retirement or death see PARA 562 ante.

7 Judicial Pensions Act 1981 s 23(2).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

567 Contribution towards the cost of widows', widowers' and children's pensions

NOTE 1--Reference to Judicial Pensions (Widowers' and Children's Benefits) Regulations 1981, SI 1981/375, should be to Judicial Pensions (Widowers' and Children's Benefits) Regulations 1987, SI 1987/375 (amended by SI 2006/749). SI 1991/2731 amended: SI 2005/3325, SI 2006/749.

The Lord Chancellor's function under the 1981 Act s 23 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

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568. Persons serving again after retirement.

Where any person after retirement from service in a judicial office¹ resumes service, that retirement must be left out of account for all the purposes of Part II of the Judicial Pensions Act 1981² (which provides for derivative benefits) except that (1) if a lump sum³ was granted on that retirement without any contribution⁴ being made, then unless that person on resumption of service, or within three months of marrying while again serving, refunds by way of contribution such sum, not exceeding three quarters of the lump sum granted on the prior retirement, as the Treasury may determine, no pension may be granted to any widow, widower or child⁵ of that person; and (2) any lump sum granted on that retirement, less any refund, must be set off against any lump sum to be granted in respect of that person's service⁶. Where a refund is made under the above provisions, all such adjustments must be made, including payments out of the Consolidated Fund⁷ or out of money provided by Parliament and payments into the Exchequer, as will secure that the position is the same as if the lump sum had been reduced by an amount equal to the refund and no refund had been made⁸.

1 As to service in a judicial office see PARA 562 ante.

2 le the Judicial Pensions Act 1981 Pt II (ss 16-29) (as amended): see PARA 562 et seq ante. As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

3 As to payment of a lump sum on death or retirement see PARA 562 ante.

4 As to contributions towards derivative benefits see PARA 567 ante; and as to voluntary contributions see PARA 570 post.

5 As to widows' and widowers' pensions see PARA 565 ante; and as to children's pensions see PARA 566 ante.

6 Judicial Pensions Act 1981 s 25(1) (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(a), Sch 18 para 29).

7 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

8 Judicial Pensions Act 1981 s 25(3).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

568 Persons serving again after retirement

TEXT AND NOTE 6--1981 Act s 25(1) further amended: SI 2005/3325.

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569. Allocation of benefits by certain officers.

The Treasury may make rules¹ for securing that, in the prescribed² circumstances, and subject to the prescribed conditions as to proof of good health and other prescribed matters, a retiring officer³ of a prescribed class⁴ is to be allowed to surrender, as from the date of retirement⁵, the prescribed part, not exceeding one third, of the personal pension granted to him under the Judicial Pensions Act 1981⁶ in return for the grant of a pension to the retiring officer's spouse, or to a dependant of his⁷. The derivative pension⁸ must be of such value as, according to tables prepared from time to time by the Government Actuary, is actuarily equivalent to the value of the part of the personal pension which is surrendered⁹.

A derivative pension for the benefit of the spouse of a retiring officer is to be payable, according as the retiring officer, in conformity with rules so made, may elect, either in (1) respect of the period, if any, for which the spouse survives the retiring officer; or (2) in respect both of the period of their joint lives (from the date of retirement) and of the period, if any, for which the spouse survives the retiring officer, and the rules may provide for the pension under

head (2) above to be at one rate during the joint lives, and at a higher rate thereafter¹⁰. A derivative pension for the benefit of a dependant (not being the spouse) of a retiring officer is to be payable for the period, if any, for which the dependant survives the retiring officer¹¹.

The fact that Part II of the Judicial Pensions Act 1981¹² (which provides for derivative pensions) applies to a person does not affect any rights of his under the provisions set out above, and any calculation to be made under Part II of the 1981 Act must be made as if any surrender under those provisions of a part of a pension had not been made¹³.

With regard to an officer¹⁴ who is retired and has not attained the age of 70 years, and who has married since his retirement, and who has been, or is to be, granted a pension ('the personal pension')¹⁵ otherwise than on the ground of ill-health, the Treasury may make rules¹⁶ for securing that, in the prescribed¹⁷ circumstances, and subject to the prescribed conditions as to proof of good health and other prescribed matters, any such officer is to be allowed to surrender, as from the date of his marriage, the prescribed part of the personal pension in return for the grant of a pension (the 'derivative pension') to the officer's spouse¹⁸. The part of the personal pension so surrendered, together with any part of it surrendered under the provisions set out above¹⁹, must not exceed one third of the personal pension²⁰. The derivative pension must be of such value as, according to tables prepared from time to time by the Government Actuary, is actuarily equivalent, at the date of the marriage, to the value of that part of the personal pension which is surrendered²¹.

The derivative pension is to be payable, according as the officer, in conformity with the rules, may elect, either (a) in respect of the period, if any, for which the spouse survives the officer; or (b) in respect both of the period of their joint lives (from the date of the marriage) and of the period, if any, for which the spouse survives the officer, and the rules may provide for the pension under head (b) above to be at one rate during the joint lives, and a higher rate thereafter²².

1 Rules under the Judicial Pensions Act 1981 s 14, Sch 1 para 10 (as amended) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Sch 1 para 10(5). At the date at which this title states the law, no such rules had been made; but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Superannuation (Allocation of Pensions) Rules 1965, SI 1965/1201, partly have effect as if so made.

2 'Prescribed' means prescribed by rules under the Judicial Pensions Act 1981 Sch 1 para 10 (as amended): Sch 1 para 10(1)(e).

3 'Retiring officer' means an officer to whom *ibid* Sch 1 (as amended) applies (see PARA 559 ante) who is granted a pension under Sch 1 para 4 (as amended), para 7 or para 8 (as amended) (see PARA 559 ante) otherwise than on the ground of ill-health: Sch 1 para 10(1)(a). As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

4 Rules under the Judicial Pensions Act 1981 Sch 1 para 10 (as amended) may prescribe classes of persons for these purposes by reference to the age which they have attained at a prescribed date: Sch 1 para 10(4).

5 'The date of retirement' means the beginning of the period in respect of which the personal pension is paid: *ibid* Sch 1 para 10(1)(c). Any suspension of a pension under Sch 1 para 9 (see PARA 559 ante) must be disregarded in determining the date of retirement as so defined: Sch 1 para 12(1).

6 For these purposes, 'the personal pension' means the pension granted as referred to in note 3 supra: see *ibid* Sch 1 para 10(1)(b). Cf the meaning of 'personal pension' for the purposes of election for membership of a personal, as opposed to a judicial, pension scheme: see PARA 561 ante.

7 *Ibid* Sch 1 para 10(2) (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(b)). In applying the Judicial Pensions Act 1981 Sch 1 para 9 (see PARA 559 ante) to a pension part of which is surrendered under Sch 1 para 10 (as amended) the salary before retirement, as defined in Sch 1 para 9(1), must be treated as reduced by the annual amount so surrendered: Sch 1 para 12(2).

8 A 'derivative pension' means a pension granted under *ibid* Sch 1 para 10(2) (as amended): Sch 1 para 10(1)(d).

- 9 Ibid Sch 1 para 10(3).
- 10 Ibid Sch 1 para 11(1).
- 11 Ibid Sch 1 para 11(2).
- 12 Ie the Judicial Pensions Act 1981 Pt II (ss 16-29) (as amended): see PARA 562 et seq ante.
- 13 Ibid Sch 1 para 13.
- 14 Ie an officer to whom ibid Sch 1 (as amended) applies: see PARA 559 ante.
- 15 Ie a pension under ibid Sch 1 para 4 (as amended), Sch 1 para 7 or Sch 1 para 8 (as amended): see PARA 559 ante.
- 16 Rules under ibid Sch 1 para 14 (as amended) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Sch 1 para 14(8). At the date at which this title states the law, no such rules had been made; but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Superannuation (Allocation of Pensions) Rules 1965, SI 1965/1201, partly have effect as if so made.
- 17 'Prescribed' means prescribed by rules made under the Judicial Pensions Act 1981 Sch 1 para 14 (as amended): Sch 1 para 14(7).
- 18 Ibid Sch 1 para 14(1), (2) (amended by the Courts and Legal Services Act 1990 s 118(1), (4)(b)). In applying the Judicial Pensions Act 1981 Sch 1 para 9 (see PARA 559 ante) to a pension part of which is surrendered under Sch 1 para 14 (as amended) in respect of any period after the marriage the salary before retirement, as defined in Sch 1 para 9(1), must be treated as reduced by the annual amount so surrendered: Sch 1 para 14(6).
- 19 Ie any part surrendered under the Judicial Pensions Act 1981 Sch 1 para 10 (as amended): see the text and notes 1-9 supra.
- 20 Ibid Sch 1 para 14(3).
- 21 Ibid Sch 1 para 14(4).
- 22 Ibid Sch 1 para 14(5).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

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(C) ADDITIONAL BENEFITS

570. Additional benefits from voluntary contributions.

Regulations made by the Lord Chancellor¹ with the consent of the Treasury must make provision entitling any member of a judicial pension scheme² constituted by the Judicial Pensions Act 1981³ to make voluntary contributions⁴ towards the cost of the provision of additional benefits, whether under the scheme or otherwise, or imposing conditions with respect to the exercise by any such person of any entitlement, whether or not under this provision, which he may have to make any such voluntary contributions⁵. The regulations may make provision for the purpose of imposing, in a case where a member⁶ makes voluntary contributions, upper limits with respect to the aggregate value of the aggregable benefits⁷ which may be paid to or in respect of any such member and the amount which any such member may pay by way of such contributions⁸ and may, in particular, impose such an upper limit on the amount which a member may pay by way of voluntary contributions as will, so far as reasonably practicable, secure that that aggregate value will not exceed the prescribed⁹ limit¹⁰.

The regulations may prescribe the manner in which aggregable benefits are to be valued for the purpose of any such aggregation as is mentioned above¹¹. They may confer on the administrators¹² of a judicial pension scheme power to require a member who is making, or who wishes to make, voluntary contributions to provide such information as they may require concerning any retained benefits¹³ of his and permit the disclosure by those administrators of any information which they may obtain concerning any such retained benefits to, or to any officers of, the Commissioners of Inland Revenue or to, or to any servants or agents of, any authorised provider¹⁴ who is, or may be, concerned in the investment of the voluntary contributions or the provision of the additional benefits in question¹⁵.

The regulations may not, however, prohibit the payment of voluntary contributions¹⁶ and may not impose any limit on the amount which any member may pay by way of voluntary contributions other than either or both of the permitted¹⁷ upper limits¹⁸. They must secure that any voluntary contributions paid by a member of a scheme are used to provide prescribed additional benefits for or in respect of him¹⁹ and that the value of such additional benefits is reasonable, having regard to the specified matters²⁰.

The regulations may, in particular:

- 154 (1) provide that the value of additional benefits offered on payment of voluntary contributions must be determined in accordance with prescribed rules based on tables prepared for the purposes of the regulations by the Government Actuary²¹;
- 155 (2) prescribe the manner in which it is to be determined in any case whether the amount of a person's contributions exceeds any permitted upper limit²²;
- 156 (3) provide for any administrative expenses incurred by any person by virtue of these provisions to be defrayed out of sums received by way of voluntary contributions²³;
- 157 (4) provide for the manner in which voluntary contributions are to be made²⁴;
- 158 (5) make provision for, and in connection with, the valuation of a person's accrued rights under any occupational or personal pension scheme which are to be transferred²⁵ into a voluntary contributions scheme²⁶, or under any voluntary contributions scheme, which on termination of his membership of that scheme may fall to be transferred into another scheme²⁷;
- 159 (6) prescribe the additional benefits which are to be available under a voluntary contributions scheme and the rates and times at which those benefits are to be payable²⁸;
- 160 (7) make provision for, and in connection with, the making of elections between different benefits available under voluntary contributions schemes²⁹;
- 161 (8) provide for the terms on which a person may terminate his membership of a voluntary contributions scheme³⁰;

- 162 (9) provide for the terms on which surplus funds³¹ may be refunded to a person who has made payments by way of voluntary contributions to a voluntary contributions scheme³²;
- 163 (10) specify any authorised providers who are to invest any prescribed voluntary contributions, or who are to provide any prescribed additional benefits, and, if two or more authorised providers are so specified, may make provision entitling any person who makes prescribed payments by way of voluntary contributions to elect between those authorised providers³³.

The regulations may provide for such additional benefits arising under or by virtue of these provisions as may be prescribed to be charged on, and paid out of, the Consolidated Fund³⁴ or to be paid out of money provided by Parliament³⁵. They may make provision for consequential and incidental matters, including, in particular, consequential provision with respect to any enactment referring or relating to lump sums payable under Part II of the Judicial Pensions Act 1981³⁶ and may make different provision for different classes or descriptions of voluntary contributions scheme³⁷.

There may be paid out of money provided by Parliament any sums required for or in connection with the operation or administration of any prescribed voluntary contributions scheme or any administrative expenses incurred under or by virtue of these provisions by a minister of the Crown or government department³⁸. Any sums received under these provisions may be paid into the Consolidated Fund³⁹.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 'Judicial pension scheme' means the occupational pension scheme constituted by the Judicial Pensions Act 1981 to provide personal pensions and derivative benefits to persons in any of the judicial offices and their widows, widowers and children: see s 14A(2) (as added) applied by s 33A(9) (s 33A added by the Courts and Legal Services Act 1990 s 82(1); amended by the Judicial Pensions and Retirement Act 1993 ss 24, 31(4), Sch 3 para 3, Sch 9; the Pension Schemes Act 1993 s 190, Sch 8 para 13; and the Pension Schemes (Northern Ireland) Act 1993 s 184, Sch 7 para 17). For the meaning of 'the judicial offices' see PARA 561 note 2 ante.

3 As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

4 'Voluntary contributions', in relation to any member of a judicial pension scheme, means voluntary contributions towards the provision of additional benefits, whether under that scheme or otherwise: Judicial Pensions Act 1981 s 33A(9) (as added: see note 2 supra).

5 Ibid s 33A(1), (6) (as added: see note 2 supra). The power to make such regulations is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 33A(7), (8) (as so added). In the exercise of the power so conferred, the Lord Chancellor has made the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639 (as amended), which came into force on 31 March 1995: see reg 1.1. These regulations are not set out in full in this title because of their technical nature: for a summary of their main provisions see PARA 549 ante. The regulations provide for the Judicial Additional Voluntary Contributions Scheme (see Pt II (regs 2.1-2.31) (as amended)) and also for Free-standing Additional Voluntary Contribution Schemes (see Pt III (regs 3.1-3.3) (as amended)). Membership of the Judicial Additional Voluntary Contributions Scheme is open not only to persons to whom the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended) applies (see PARA 538 ante) but also to persons holding qualifying judicial office (see PARA 539 ante) on 31 March 1995 (the commencement date of the Judicial Pensions and Retirement Act 1993: see PARA 535 note 5 ante) and who held such office at any time before that day but to whom Pt I (as amended) does not apply: Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 2.2(1)(b), which is subject to certain exceptions set out in reg 2.2(1)(b)(i)-(vi). The exclusions do not relate to persons holding offices in the Supreme Court or county courts. Membership of Free-standing Additional Voluntary Contribution Schemes is open to, among other persons, members of existing schemes such as that constituted under the Judicial Pensions Act 1981: see the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, regs 1.2, 3.1 (as substituted).

6 'Member' means member of a judicial pension scheme: Judicial Pensions Act 1981 s 33A(9) (as added: see note 2 supra).

7 'Aggregable benefits' means (1) any pensions or other benefits under a judicial pension scheme, other than such additional benefits as are mentioned in *ibid* s 33A(1) (as added: see note 2 *supra*); (2) such additional benefits so mentioned as may be prescribed; and (3) such retained benefits as may be prescribed; and 'prescribed' means specified in, or determined in accordance with, the regulations: s 33A(9) (as so added).

8 *Ibid* s 33A(1A)(a), (b) (as added: see note 2 *supra*).

9 *Ie* the limit prescribed as mentioned in *ibid* s 33A(1A)(b) (as added: see note 2 *supra*): see the text and notes 7-8 *supra*.

10 *Ibid* s 33A(1A) (as added; see note 2 *supra*).

11 *Ibid* s 33A(1B)(a) (as added: see note 2 *supra*).

12 'Administrators', in relation to any scheme, means the persons entrusted with the administration of that scheme: *ibid* s 33A(9) (as added: see note 2 *supra*).

13 *Ibid* s 33A(1B)(b) (as added: see note 2 *supra*). 'Retained benefits', in the case of any person, means any rights retained by him to relevant benefits under any occupational or personal pension scheme which has, or which may be expected to qualify for, tax-exemption or tax-approval, being rights which accrued during some previous employment; 'relevant benefits' has the meaning given by the Income and Corporation Taxes Act 1988 s 612(1) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 741 note 6); 'occupational pension scheme' and 'personal pension scheme' have the meanings given by the Pension Schemes Act 1993 s 1 (as amended) or, in relation to Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993 s 1 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 741, 710 respectively); 'tax-exemption' and 'tax-approval' have the meaning given by the Pension Schemes Act 1993 s 181(1) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 898 note 4); and 'employment' has the same meaning as it has in the Pension Schemes Act 1993 (and accordingly includes employment as a self-employed earner, within the meaning of the Social Security Contributions and Benefits Act 1992 s 2: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 32): Judicial Pensions Act 1981 s 33A(9) (as added and amended: see note 2 *supra*).

14 'Authorised provider', in relation to the investment of any sums paid by way of voluntary contributions or the provision of any benefit, means: (1) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 to invest such sums or, as the case may be, to provide that benefit; (2) an EEA firm of a kind mentioned in Sch 3 para 5(a), (b) or (c), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to invest such sums or, as the case may be, to provide that benefit and which satisfies the conditions applicable to it which are specified in the Judicial Pensions Act 1981 s 33A(9B), (9C) or (9D) (as added); or (3) an EEA firm of a kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(d), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to invest such sums or, as the case may be, to provide that benefit: Judicial Pensions Act 1981 s 33A(9) (as added: see note 2 *supra*; definition substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 110(3)(a)). In the Judicial Pensions Act 1981 s 33A(9) (as added and amended), the definitions of 'authorised provider' and 'insurer' (see note 20 *infra*) must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22, and Sch 2: Judicial Pensions Act 1981 s 33A(9A) (s 33(9A)-(9E) added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 110(4)). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(a), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on a service falling within section A or C of the Annex to the Investment Services Directive, and that the firm is authorised by its home state authorisation to carry on that service: Judicial Pensions Act 1981 s 33A(9B) (as so added). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(b), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within Annex 1 to the Banking Consolidation Directive, and that the activity in question is one in relation to which an authority in the firm's home state has regulatory functions: Judicial Pensions Act 1981 s 33A(9C) (as so added). If the EEA firm concerned is of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(c), the conditions are that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within Annex 1 to the Banking Consolidation Directive, that the activity in question is one in relation to which an authority in the firm's home state has regulatory functions, and that the firm also carries on the activity in question in its home state: Judicial Pensions Act 1981 s 33A(9D) (as so added). Expressions used in s 33A(9B)-(9D) (as so added) which are also used in the Financial Services and Markets Act 2000 Sch 3 have the same meaning in those subsections as they have in that Schedule: Judicial Pensions Act 1981 s 33A(9E) (as so added). See further FINANCIAL SERVICES AND INSTITUTIONS.

15 *Ibid* s 33A(1B)(c) (as added: see note 2 *supra*).

16 *Ibid* s 33A(2)(a) (as added: see note 2 *supra*).

17 The permitted limits are; (1) such upper limit as may be imposed by virtue of *ibid* s 33A(1A)(b) (as added: see note 2 *supra*) (see the text and notes 7-8 *supra*); or (2) an upper limit corresponding to that for the time being fixed by or under the Income and Corporation Taxes Act 1988 s 594 (as amended) (exempt statutory schemes: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 756); Judicial Pensions Act 1981 s 33A(2)(b) (as added and amended: see note 2 *supra*).

18 *Ibid* s 33A(2)(b) (as added and amended: see note 2 *supra*).

19 *Ibid* s 33A(2)(c) (as added: see note 2 *supra*). This has effect only in relation to a voluntary contributions scheme constituted by or under the Judicial Pensions Act 1981: s 33A(2)(b) (as so added; and as amended: see note 2 *supra*).

20 *Ibid* s 33A(2)(d) (as added: see note 2 *supra*). The matters to which regard must be had are: (1) the amount paid by way of voluntary contributions; (2) the value of the other benefits provided under the scheme; and (3) the general value of benefits available to a person under any contract of life insurance entered into by him with an insurer: s 33A(2)(d) (as added: see note 2 *supra*; amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 110(2)). 'Insurer' means: (a) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 to effect or carry out contracts of long-term insurance; (b) an EEA firm of the kind mentioned in Sch 3 para 5(d), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to effect or carry out contracts of long-term insurance: Judicial Pensions Act 1981 s 33A(9) (as so added: definition added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 110(3)(b)). See also note 14 *supra*. This has effect only in relation to a voluntary contributions scheme constituted by or under the Judicial Pensions Act 1981: s 33A(2)(b) (as so added; and as amended: see note 2 *supra*).

21 *Ibid* s 33A(3)(a) (as added and amended: see note 2 *supra*).

22 *Ibid* s 33A(3)(b) (as added and amended: see note 2 *supra*); and see note 17 *supra*.

23 *Ibid* s 33A(3)(c) (as added and substituted: see note 2 *supra*).

24 *Ibid* s 33A(3)(d) (as added: see note 2 *supra*). Where a person's voluntary contributions are made by deduction from salary, any reference to payment of, or by way of, voluntary contributions is to be taken to include a reference to the making of voluntary contributions by deduction or, as the case may require, to any voluntary contributions so made: s 33A(9) (as so added).

25 As to the transfer of rights see PARA 572 *post*.

26 'Voluntary contributions scheme' means any occupational pension scheme if and to the extent that it is a scheme under which such additional benefits as are mentioned in the Judicial Pensions Act 1981 s 33A(1) (as added and amended: see note 2 *supra* and the text and notes 1-5 *supra*) are, or are to be, provided: s 33A(9) (as so added).

27 *Ibid* s 33A(3)(e) (as added: see note 2 *supra*).

28 *Ibid* s 33A(3)(f) (as added: see note 2 *supra*).

29 *Ibid* s 33A(3)(g) (as added: see note 2 *supra*).

30 *Ibid* s 33A(3)(h) (as added: see note 2 *supra*).

31 'Surplus funds', in relation to a person and any voluntary contributions scheme, means any funds which are, or have been, held for the purposes of that voluntary contributions scheme and which fall to be returned to him in consequence of any such limit as is mentioned in *ibid* s 33A(2)(b) (as added and amended) (see note 17 *supra*): s 33A(9) (as added: see note 2 *supra*).

32 *Ibid* s 33A(3)(j) (as added: see note 2 *supra*).

33 *Ibid* s 33A(3)(k) (as added and amended: see note 2 *supra*).

34 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

35 Judicial Pensions Act 1981 s 33A(4A) (as added: see note 2 *supra*).

36 *Ibid* s 33A(5) (as added: see note 2 *supra*). As to lump sums payable under Pt II (ss 16-29) (as amended) see PARA 562 *ante*.

37 Ibid s 33A(5A) (as added: see note 2 supra).

38 Ibid s 33A(10) (as added: see note 2 supra). This is expressed to be without prejudice to s 33A(3)(c), (d), (4A) (as so added).

39 Ibid s 33A(11) (as added: see note 2 supra).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

570 Additional benefits from voluntary contributions

TEXT AND NOTE 1--The Lord Chancellor's function under the 1981 Act s 33A is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 5--SI 1995/639 further amended: SI 2005/3325, SI 2006/747.

NOTE 13--Definition of 'retained benefits' amended; definitions of 'relevant benefits', 'tax-exemption' and 'tax-approval' omitted: Judicial Pensions Act 1981 s 33A(9) (amended by the Taxation of Judicial Pensions (Consequential Provisions) Order 2006, SI 2006/497).

NOTE 14--Reference to section A or C of the Annex to the Investment Services Directive is now to section A or B of Annex I to the Markets in Financial Instruments Directive (ie European Parliament and Council Directive 2004/39): 1981 Act s 33A(9B) (amended by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007, SI 2007/126).

TEXT AND NOTE 18--For 'other than ... limits' read 'such upper limit as may be imposed by virtue of the 1981 Act s 33A(1A)(b)' (see TEXT AND NOTE 8): s 33A(2)(b) (amended by SI 2006/497).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(C) Additional Benefits/571. Purchase of added benefits.

571. Purchase of added benefits.

Although provision is made by the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995¹ for the Judicial Added Years Scheme ('JAYS'), the Judicial Added Surviving Spouse's Pension Scheme ('JASSPS') and the Judicial Added Benefits Scheme ('JABS')², membership of the JAYS and the JASSPS is restricted to persons to whom Part I of the Judicial Pensions and Retirement Act 1993³ applies⁴. Thus only membership of the JABS is open to a

person who is a member of a judicial pension scheme constituted under the Judicial Pensions Act 1981, subject to certain exclusions⁵.

The JABS, which allows a member to purchase added units of benefit in his existing scheme, has already been discussed⁶.

1 See the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639 (as amended), which are partly made in exercise of the Lord Chancellor's powers under the Judicial Pensions Act 1981 s 33A (as added and amended): see PARA 570 ante.

2 See the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.1(1).

3 See the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended): see PARA 538 et seq ante.

4 Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.2(1). As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

5 Judicial Pensions (Additional Voluntary Contributions) Regulations 1995, SI 1995/639, reg 4.2(4). For the exclusions, which do not relate to persons holding offices in the Supreme Court or county courts, see reg 2.2(1)(b)(ii)-(vi).

6 See PARA 550 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

571 Purchase of added benefits

TEXT AND NOTES--SI 1995/639 further amended: SI 2005/3325, SI 2006/747.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(D) Transfers of Benefits and Pension Credits/572. Transfers of accrued benefits out of, and into, the judicial pension scheme.

(D) TRANSFERS OF BENEFITS AND PENSION CREDITS

572. Transfers of accrued benefits out of, and into, the judicial pension scheme.

Provision is made under the Judicial Pensions Act 1981 for the transfer of accrued benefits out of, and into, the judicial pension scheme constituted by the Act¹. When his qualifying service² ends, a qualifying member acquires a right to the cash equivalent at the relevant date³ of any benefits which have accrued to, or in respect of him, under the scheme or, where service of his in judicial office is disregarded service⁴, which would have so accrued if his service in judicial

office had ended on the same date as that on which his qualifying service ended⁵. A qualifying member who acquires a right to a cash equivalent may only take it by exercising the option of requiring the Treasury to use the cash equivalent in whichever of the following ways the qualifying member chooses:

- 164 (1) for acquiring transfer credits allowed under the rules of another occupational pension scheme whose trustees or managers are able and willing to accept him and which satisfies prescribed requirements⁶;
- 165 (2) for acquiring rights allowed under the rules of a personal pension scheme whose trustees or managers are able and willing to accept him and which satisfies prescribed requirements⁷;
- 166 (3) for purchasing from one or more authorised insurers⁸ chosen by the qualifying member and willing to accept payment on his account from the Treasury, one or more annuities which satisfy prescribed requirements⁹;
- 167 (4) for subscribing to other pension arrangements which satisfy prescribed requirements¹⁰.

At the date at which this title states the law, these provisions had not been brought into force and no regulations had been made for their purposes¹¹; thus any such transfers will be made under the provisions of the Pension Schemes Act 1993¹².

A member of the scheme may also ask the Lord Chancellor to accept a payment representing the cash equivalent of his accrued rights in any other qualifying scheme¹³. Again, at the date at which this title states the law these provisions had not been brought into force and no regulations had been made for their purposes¹⁴, so that any such transfers will be made under the provisions of the Pension Schemes Act 1993¹⁵.

Regulations have, however been made for the purposes of the initial transfer of a person's accrued rights in an existing judicial pension scheme into the scheme constituted under Part I of the Judicial Pensions and Retirement Act 1993¹⁶.

1 See the Judicial Pensions Act 1981 s 29A, Sch 1A (prospectively added by the Courts and Legal Services Act 1990 s 81, Sch 13, as from a day to be appointed under s 124(3); amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 326). At the date at which this title states the law, no such day had been appointed.

2 'Qualifying service' means the service, or relevant service, by reference to which a qualifying member's entitlement to benefit under the scheme is calculated; 'qualifying member' means a person to whom the Judicial Pensions Act 1981 Sch 1A Pt II (paras 4-10) (as added) applies; and 'scheme' means the relevant occupational pension scheme constituted by the Judicial Pensions Act 1981: Sch 1A para 1(1) (as added: see note 1 supra; renumbered by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 326(2)). The Judicial Pensions Act 1981 Sch 1A Pt II (as so added) applies to any person to or in respect of whom benefits are payable under the scheme and whose qualifying service ends after Sch 1A (as so added) comes into force, provided that (1) his qualifying service ends at least one year before he reaches normal pension age; and on the date on which it ends he has accrued rights to benefits under the scheme or he would have such rights if his service in judicial office had also ended on that date: Sch 1A para 4 (as so added). 'Normal pension age' means the earliest age at which, if his service had continued until retirement at that age, a member of the scheme might have been entitled to receive a pension under the scheme: Sch 1A para 1(1) (as so added and renumbered). As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

3 'The relevant date' means the date when the qualifying member's qualifying service ends or the date of any application which he has made under the Judicial Pensions Act 1981 Sch 1A para 6 (as added and amended: see note 1 supra) and which has not been withdrawn (see the text and notes 6-10 infra), whichever is the later: Sch 1A para 5(2) (as so added).

4 'Disregarded service', in relation to any member of a scheme, means any period of service in judicial office during which an election under s 14A(9) (as added) (membership of personal pension scheme: see PARA 561 ante) is in force in respect of the qualifying member: *ibid* Sch 1A para 1(1) (as added and renumbered: see notes 1-2 supra).

5 Ibid Sch 1A para 5(2) (as added: see note 1 supra). The Pension Schemes Act 1993 Pt IV Ch IV (as amended) (transfer values: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 951 et seq) and the equivalent Northern Ireland legislation do not apply in relation to a scheme to which the Judicial Pensions Act 1981 Sch 1A (as so added) applies: Sch 1A para 3 (as so added; amended by the Pension Schemes Act 1993 s 190, Sch 8 para 14; and by the Pension Schemes (Northern Ireland) Act 1993 s 184, Sch 7 para 18).

6 Judicial Pensions Act 1981 Sch 1A para 6(1), (2)(a) (as added: see note 1 supra). 'Prescribed' means prescribed by regulations made by the Lord Chancellor with the concurrence of the Treasury, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see Sch 1A paras 1(1), 2 (as so added; para 1(1) as renumbered: see note 2 supra); but see the text and note 11 infra. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Ibid Sch 1A para 6(1), (2)(b) (as added: see note 1 supra).

8 'Authorised insurer' means: (1) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 to effect or carry out contracts of long-term insurance; or (2) an EEA firm of the kind mentioned in Sch 3 para 5(d), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) to effect or carry out contracts of long-term insurance: Judicial Pensions Act 1981 Sch 1A para 1(1) (as added and renumbered: see notes 1-2 supra; definition substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 326(3)). This definition of 'authorised insurer' must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22, and Sch 2: Judicial Pensions Act 1981 Sch 1A para 1(2) (added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 326(4)). See further FINANCIAL SERVICES AND INSTITUTIONS; INSURANCE.

9 Judicial Pensions Act 1981 Sch 1A para 6(1), (2)(c) (as added and amended: see note 1 supra).

10 Ibid Sch 1A para 6(1), (2)(d) (as added: see note 1 supra). See further Sch 1A para 6(2)-(7) (as so added; and as amended: see note 1 supra). As to the method of exercising the option, which must be in writing, see Sch 1A para 9 (as so added); as to the time within which it must be exercised see Sch 1A para 8 (as so added); as to the calculation of cash equivalents see Sch 1A para 7 (as so added); and as to cancellation of the exercise of the option see Sch 1A para 10 (as so added).

11 See note 1 supra. The Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, apply only to transfers in and out of schemes constituted under the Judicial Pensions and Retirement Act 1993: see the Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995, SI 1995/637, reg 3. As to the 1995 regulations see PARA 552 ante.

12 See note 5 supra.

13 See the Judicial Pensions Act 1981 Sch 1A Pt III (paras 11-13) (as added and amended: see note 1 supra).

14 See notes 1, 11 supra.

15 See note 5 supra.

16 See the Judicial Pensions (Transfer between Judicial Pension Schemes) Regulations 1995, SI 1995/636 (as amended); and PARA 538 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

572 Transfers of accrued benefits out of, and into, the judicial pension scheme

TEXT AND NOTES--See further Constitutional Reform Act 2005 s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 10--1981 Act Sch 1A para 6(3) amended: Commissioners for Revenue and Customs Act 2005 Sch 4 para 29. 1981 Act Sch 1A para 6(7) amended: SI 2005/3325.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(D) Transfers of Benefits and Pension Credits/573. Pension credits under pension sharing arrangements; restriction on payments.

573. Pension credits under pension sharing arrangements; restriction on payments.

The Lord Chancellor¹ has no power to accept certain payments² for the benefit of a member of a judicial pension scheme constituted under or by virtue of the Judicial Pensions Act 1981³ to the extent that such a payment directly or indirectly represents a pension credit⁴.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 I.e. a payment under the Welfare Reform and Pensions Act 1999 Sch 5 para 1(3), or under the Pension Schemes Act 1993 s 95 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 954), or any other payment: see the Judicial Pensions Act 1981 s 29B(1) (s 29B added by the Judicial Pensions Act 1981 (Amendment) Regulations 2000, SI 2000/2985, reg 2).

3 As to such schemes see PARA 556 et seq ante. As to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

4 Judicial Pensions Act 1981 s 29B(1), (2) (as added: see note 2 supra). For the equivalent provision under the Judicial Pensions and Retirement Act 1993 see PARA 554 ante.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

573 Pension credits under pension sharing arrangements; restriction on payments

TEXT AND NOTES--The Lord Chancellor's function under the 1981 Act s 29B is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(5) JUDICIAL APPOINTMENTS, SALARIES AND PENSIONS/(iv) Judicial Pensions/C. THE JUDICIAL PENSIONS ACT 1981/(E) Appeals/574. Appeals.

(E) APPEALS

574. Appeals.

If (1) any member¹ of a pension scheme constituted under or by virtue of the Judicial Pensions Act 1981 (a 'relevant pension scheme')²; or (2) the widow or widower, or any surviving dependant, of a deceased member of the scheme; or (3) a person claiming to be such a person as is mentioned in head (1) or head (2) above or claiming to be entitled to become a member of the scheme, is aggrieved by any decision³ taken by the administrators⁴ of the scheme concerning the interpretation of the rules⁵ of the scheme or the exercise of any discretion under the scheme, he has a right of appeal to the Lord Chancellor⁶ against that decision⁷.

Regulations made by the Lord Chancellor may make provision as to the manner in which, and time within which, appeals under these provisions are to be brought⁸. Such appeals are governed by the Judicial Pensions (Appeals) Regulations 1995⁹, partly made under this power, which have already been discussed¹⁰. The administrators are entitled to appear and be heard on any such appeal¹¹.

On deciding such an appeal, the Lord Chancellor may give to the administrators such directions as he considers necessary or expedient for implementing his decision¹².

With regard to certain questions¹³ relating to Supreme Court officers (other than members of the higher judiciary and circuit judges) and county court officers¹⁴, the Treasury's decision is expressed to be final¹⁵.

1 'Member', in relation to a pension scheme, means a person whose service in an office is, was or is to be subject to the scheme: Judicial Pensions Act 1981 s 32A(6) (s 32A added by the Judicial Pensions and Retirement Act 1993 s 24, Sch 3 para 2(2)).

2 See the Judicial Pensions Act 1981 s 32A(6) (as added: see note 1 supra). As to pension schemes constituted under or by virtue of the Judicial Pensions Act 1981 see PARA 556 et seq ante; and as to the circumstances in which the Judicial Pensions Act 1981, rather than the Judicial Pensions and Retirement Act 1993, applies to a person see PARA 537 ante.

3 In the case of a person falling within head (3) in the text, the decision must relate to the question whether a person who claims to be such a person as is mentioned in head (1) or head (2) in the text is such a person, or whether a person who claims to be entitled to become a member of the scheme is so entitled: see the Judicial Pensions Act 1981 s 32A(3)(c) (as added: see note 1 supra).

4 'The administrators', in relation to a pension scheme, means the persons entrusted with the administration of the scheme: *ibid* s 32A(6) (as added: see note 1 supra).

5 'Rules', in relation to a relevant pension scheme, means the provisions of the Judicial Pensions Act 1981, and of any regulations or orders made thereunder, so far as relating to that scheme: s 32A(6) (as added: see note 1 supra).

6 *Ie* as the appropriate minister: see *ibid* s 32A(6) (as added: see note 1 supra). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 *Ibid* s 32A(1), (3) (as added: see note 1 supra).

8 *Ibid* s 32A(4), (6) (as added: see note 1 supra).

9 *Ie* the Judicial Pensions (Appeals) Regulations 1995, SI 1995/635, which came into force on 31 March 1995: regs 1, 3(b).

10 See PARA 555 the text and notes 12-20 ante.

11 Judicial Pensions Act 1981 s 32A(5) (as added: see note 1 supra).

12 Ibid s 32A(2) (as added: see note 1 supra).

13 In any question which arises: (1) as to the claim of any person or class of persons under *ibid* s 14, Sch 2 para 4 (as amended) or Sch 2 para 6 (see PARAS 559, 563 ante); (2) as to the application of any provision in Sch Pt II (paras 4-14) (as amended) (pensions and derivative benefits) (excluding Sch 2 para 9 (re-employment after retirement: see PARA 559 ante)) or Sch 2 Pt III (paras 15-17) (as amended) (gratuities and allowances in cases of occupational injury or disease) (see PARA 559 ante) or Sch 2 Pt IV (paras 18-23) (as amended) (supplemental provisions) (see PARA 559 ante) (excluding Sch 2 para 23 (which relates to the President of the Transport Tribunal)) to any person; (3) as to the amount of any pension or lump sum under Sch 2 (as amended); (4) as to the reckoning of service for any pension or lump sum under Sch 2 (as amended): Sch 2 para 22.

14 In persons to whom *ibid* Sch 2 (as amended) applies: see PARA 559 ante.

15 Ibid Sch 2 para 22. As to the extent to which a decision expressed to be final may be challenged by way of judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

574 Appeals

TEXT AND NOTES 1-12---The Lord Chancellor's functions under the 1981 Act s 32A are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 7--1981 Act s 32A(3) amended: SI 2005/3325.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(6) PROCEDURAL MATTERS/(i) Court Rules and Practice Directions/575. Civil procedure rules and practice directions.

(6) PROCEDURAL MATTERS

(i) Court Rules and Practice Directions

575. Civil procedure rules and practice directions.

The Civil Procedure Rules 1998 ('the CPR')¹ are the rules of court that currently govern the practice and procedure to be followed in the Civil Division of the Court of Appeal, the High Court², and the county courts³. They are divided into Parts and most Parts are supplemented by practice directions⁴. For the first time, there are rules common to most civil proceedings in the courts exercising jurisdiction in England and Wales⁵.

The Civil Procedure Rules are made by the Civil Procedure Rule Committee⁶, which must exercise its power to make the rules with a view to securing that the civil justice system is accessible, fair and efficient⁷. The membership of the Committee consists of the Master of the Rolls⁸, the Vice-Chancellor⁹ and 12 other persons appointed by the Lord Chancellor¹⁰. The Lord Chancellor must appoint one judge of the Supreme Court¹¹; one circuit judge¹²; one district judge¹³; one master¹⁴; three persons who have a Supreme Court qualification¹⁵ including at least one with particular experience of practice in county courts¹⁶; three persons who have been granted by an authorised body¹⁷ the right to conduct litigation in relation to all proceedings in the Supreme Court, including at least one with particular experience of practice in county courts¹⁸; one person with experience in and knowledge of consumer affairs¹⁹; and one person with experience in and knowledge of the lay advice sector²⁰.

Before making or amending Civil Procedure Rules the Civil Procedure Rule Committee must consult such persons as the committee considers appropriate and must meet, unless it is inexpedient to do so²¹. The Committee must try to make rules which are both simple and simply expressed²². The rules must be signed by at least eight members of the Committee and be submitted to the Lord Chancellor, who may allow or disallow them²³. The rules must be contained in a statutory instrument and are subject to annulment by resolution of either House of Parliament²⁴.

Instead of providing for any matter of practice and procedure, Civil Procedure Rules may refer to provision about that matter made or to be made by practice directions²⁵, which are defined as directions as to the practice and procedure of any court within the scope of the rules²⁶. Practice directions applicable to the Supreme Court are made, in the exercise of their inherent jurisdiction, in respect of the practice and procedure in their respective Divisions by the Lord Chief Justice as President of the Queen's Bench Division, by the Master of the Rolls as President of the Civil Division of the Court of Appeal and by the Vice-Chancellor as Vice-President of the Chancery Division²⁷. Practice Directions providing for practice and procedure in the county courts²⁸ may be made by the Lord Chancellor or any person authorised by him to act on his behalf, and may not be made by any other person without his approval²⁹. The Vice-Chancellor, as Head of Civil Justice, and the Deputy Head of Civil Justice have been authorised to make such practice directions on behalf of the Lord Chancellor³⁰. Practice Directions may also provide for the removal or transfer of proceedings within the High Court between divisions or district registries or between county courts³¹.

Subject to the exceptions set out below³², the Civil Procedure Rules apply to all proceedings in county courts³³, the High Court³⁴ and the Civil Division of the Court of Appeal³⁵. They do not, however, apply to proceedings of the following kinds³⁶, for which rules may be made under the specified enactments³⁷, except to the extent that they are applied to those proceedings by another enactment³⁸:

- 168 (1) insolvency proceedings for which rules may be made under certain provisions of the Insolvency Act 1986³⁹;
- 169 (2) non-contentious or common form probate proceedings for which rules may be made under the Supreme Court Act 1981⁴⁰;
- 170 (3) proceedings in the High Court when acting as a prize court for which rules may be made under the Prize Courts Act 1894⁴¹;
- 171 (4) proceedings before the judge⁴² for which rules may be made under the Mental Health Act 1983⁴³;
- 172 (5) family proceedings for which rules may be made under the Matrimonial and Family Proceedings Act 1984⁴⁴;
- 173 (6) adoption proceedings for which rules may be made under the Adoption Act 1976⁴⁵.

1 The Civil Procedure Rules are the product of a wholesale review of the civil justice system in the 1990s led by Lord Woolf. In 1995 he presented a draft report *Access to Justice* to the Lord Chancellor. The Final Report and

draft civil procedure rules were published in July 1996 and his recommendations were in large part adopted by the government. The Civil Procedure Act 1997 provided the necessary rule-making powers and the CPR themselves were contained in a statutory instrument and came into force on 24 April 1999: see the Civil Procedure Rules 1998, SI 1998/3132 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq.

2 le subject to certain exceptions: see heads (1)-(6) in the text.

3 See CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq.

4 See CIVIL PROCEDURE vol 11 (2009) PARAS 27, 30.

5 See CIVIL PROCEDURE vol 11 (2009) PARA 24. For the history of rule-making powers see CIVIL PROCEDURE vol 11 (2009) PARA 10.

6 Civil Procedure Act 1997 s 2(1). Section 10, Sch 2 amends, inter alia, the Supreme Court Act 1981 and the County Courts Act 1984, effectively abolishing the Supreme Court Rule Committee and the County Court Rule Committee, established under those Acts: see the Civil Procedure Act 1997 Sch 2 paras 1, 2.

The Civil Procedure Rule Committee only has power to make rules dealing with practice and procedure and is not empowered to alter the substantive law: see CIVIL PROCEDURE vol 11 (2009) PARA 4.

7 Ibid s 1(3). As to the overriding objective of the Civil Procedure Rules see CPR 1.1, 1.2; and CIVIL PROCEDURE vol 11 (2009) PARA 33.

8 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

9 As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

10 See the Civil Procedure Act 1997 s 2(1), (2). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

11 Ibid s 2(2)(a). As to judges of the Supreme Court see PARA 515 ante, paras 602, 619, 633, 637 post. Before making such an appointment the Lord Chancellor must consult the Lord Chief Justice: s 2(3). As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

12 Ibid s 2(2)(b). As to circuit judges see PARA 522 et seq ante.

13 Ibid s 2(2)(c). As to district judges see PARAS 529-530 ante, paras 661-662, 728 post.

14 le one person who is a master referred to in the Supreme Court Act 1981 ss 88-95 (as amended), Sch 2 Pt II (as substituted and amended) (see PARA 647 et seq post): Civil Procedure Act 1997 s 2(2)(d).

15 le within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended). A person has a 'Supreme Court qualification' if he has a right of audience in relation to all proceedings in the Supreme Court: s 71(3)(a). As to rights of audience see PARA 331 ante; and LEGAL PROFESSIONS; and as to the Supreme Court of England and Wales see PARA 601 et seq post.

16 Civil Procedure Act 1997 s 2(2)(e). Before appointing a person under s 2(2)(e) or (f), the Lord Chancellor must consult any body which has members who are eligible for appointment under that provision and which is an authorised body for the purposes of the Courts and Legal Services Act 1990 s 27 or s 28 (each as amended: see PARAS 331-332 ante; and LEGAL PROFESSIONS vol 65 (2008) PARA 329 et seq): Civil Procedure Act 1997 s 2(4). As to county courts see PARA 701 et seq post.

17 le under the Courts and Legal Services Act 1990 Pt II (ss 17-70) (as amended): see LEGAL PROFESSIONS vol 65 (2007) PARA 329 et seq.

18 Civil Procedure Act 1997 s 2(2)(f); and see note 16 supra.

19 Ibid s 2(2)(g).

20 Ibid s 2(2)(h).

21 Ibid s 2(6).

22 Ibid s 2(7).

23 Ibid s 2(8). Rules so made and allowed come into force on such day as the Lord Chancellor may direct: s 3(1)(a).

24 Ibid s 3(1)(b), (2). The Statutory Instruments Act 1946 applies to such a statutory instrument as if it contained rules made by a minister of the Crown: Civil Procedure Act 1997 s 3(1)(b). As to statutory instruments see further STATUTES vol 44(1) (Reissue) PARA 1501 et seq.

25 Ibid s 1, Sch 1 para 6.

26 See ibid s 9(2).

27 See *Practice Direction* [1999] 3 All ER 380, sub nom *Practice Direction (Civil Litigation: Procedure)* [1999] 1 WLR 1124, signed on 23 April 1999 by the Heads of Division and published in *Civil Procedure Rules, Practice Directions, Pre-action Protocols and Forms* vol 1 (HMSO, May 2001).

28 In any case not expressly provided for by or in pursuance of the County Courts Act 1984, the general principles of practice in the High Court may be adopted and applied to proceedings in a county court: see s 76.

29 See ibid s 74A(1), (2), (4) (added by the Civil Procedure Act 1997 s 5(2)). The Lord Chancellor's power to make directions under this provision includes power to vary or revoke directions made by him or any other person, and to make different provision for different cases or different areas, including different provision (1) for a specific court; or (2) for specific proceedings, or a specific jurisdiction, specified in the directions: County Courts Act 1984 s 74A(3) (as so added).

30 See note 27 supra.

31 See the Civil Procedure Act 1997 s 5(1), Sch 1 para 3. As to the transfer of proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 66 et seq.

32 See heads (1)-(6) in the text.

33 CPR 2.1(1)(a).

34 CPR 2.1(1)(b).

35 CPR 2.1(1)(c).

36 Ie proceedings of the kinds specified in CPR 2.1(2), Table, col 1: see the text and notes 39-45 infra.

37 Ie the enactments specified in CPR 2.1(2), Table col 2: see the text and notes 39-45 infra.

38 CPR 2.1(2).

39 Ie under the Insolvency Act 1986 s 411 (company insolvency rules: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1041) or s 412 (individual insolvency rules: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY): CPR 2.1(2), Table item 1.

40 Ie under the Supreme Court Act 1981 s 127 (probate rules: see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 81): CPR 2.1(2), Table item 2.

41 Ie under the Prize Courts Act 1894 s 3 (as amended) (rules of court for and fees in prize courts: see PRIZE vol 36(2) (Reissue) PARA 852): CPR 2.1(2), Table item 3.

42 Ie within the meaning of the Mental Health Act 1983 Pt VII (ss 93-113) (as amended): see MENTAL HEALTH vol 30(2) (Reissue) PARA 674.

43 Ie under the Mental Health Act 1983 s 106 (rules of procedure: see MENTAL HEALTH vol 30(2) (Reissue) PARA 677): CPR 2.1(2), Table item 4.

44 Ie under the Matrimonial and Family Proceedings Act 1984 s 40 (as amended) (family proceedings rules: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1005): CPR 2.1(2), Table item 5. However, CPR Pts 43, 44 (except CPR 44.9-44.12) and CPR Pts 47, 48 apply in family proceedings and in the Family Division to any assessment of costs that takes place on or after 26 April 1999: see the Family Proceedings (Miscellaneous Amendments) Rules 1999, SI 1999/1012, r 4(1)-(3); and PARA 576 post.

45 Ie under the Adoption Act 1976 s 66 (as amended) (rules of procedure: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207): CPR 2.1(2), Table item 6.

UPDATE**501-579 The Administration of the [Senior Courts] and County Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

575-578 Court Rules and Practice Directions

As to Supreme Court Rules see Constitutional Reform Act 2005 ss 45, 46; and PARA 601C.

575 Civil procedure rules and practice directions

TEXT AND NOTES 6-23--Civil Procedure Act 1997 s 2 amended: Constitutional Reform Act 2005 Sch 4 paras 263, 385.

The Lord Chancellor may by order (1) amend the 1997 Act s 2(2), (3) or (4), and (2) make consequential amendments in any other provision of s 2: s 2A(1) (s 2A added by Courts Act 2003 s 84; s 2A(1) amended by Constitutional Reform Act 2005 Sch 4 para 264(2)). The Lord Chancellor may make an order under the 1997 Act s 2A only with the concurrence of the Lord Chief Justice: s 2A(2) (substituted by 2005 Act Sch 4 para 264(3)). Before making an order under the 1997 Act s 2A the Lord Chancellor must consult the following persons (a) the Head of Civil Justice; (b) the Deputy Head of Civil Justice (if there is one): s 2A(2A) (as so substituted). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 1997 Act s 2A: s 2A(2B) (as so substituted). The power to make an order under s 2A is exercisable by statutory instrument: s 2A(3) (s 2A as so added). A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 2A(4) (s 2A as so added).

TEXT AND NOTES 6, 10--1997 Act s 2(1) amended: 2003 Act s 83(1).

TEXT AND NOTE 11--Now either two or three judges of the Senior Courts: 1997 Act s 2(2) (a) (substituted by the 2003 Act s 83(2); and amended by Constitutional Reform Act 2005 Sch 11 para 4).

TEXT AND NOTE 13--For 'one district judge' substitute 'either one or two district judges': 1997 Act s 2(2)(c) (amended by SI 2006/1847).

TEXT AND NOTES 19, 20--For 'one person ... sector' read 'two persons with experience in and knowledge of the lay advice sector or consumer affairs': 1997 s 2(2)(g) (s 2(2)(g), (h) substituted by the 2003 Act s 83(3)).

TEXT AND NOTE 29--County Courts Act 1984 s 74A repealed: Constitutional Reform Act 2005 Sch 4 para 169, Sch 18 Pt 2.

TEXT AND NOTE 31--1997 Act s 5 substituted: Constitutional Reform Act 2005 Sch 2 para 6.

TEXT AND NOTES 36-45--Also, head (7) election petitions in the High Court for which rules may be made under the Representation of the People Act 1983 s 182 (see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 765): CPR 2.1(2), Table item 7 (added by SI 2003/1242).

NOTE 45--Reference to 1976 Act s 66 is also to the Adoption and Children Act 2002 s 141: CPR 2.1(2), Table item 6 (amended by SI 2005/3515).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(6) PROCEDURAL MATTERS/(i) Court Rules and Practice Directions/576. Family proceedings rules.

576. Family proceedings rules.

The power to make rules of court for the purpose of family proceedings¹ in the High Court or county courts is exercisable by the Lord Chancellor² together with any four or more of the following persons, namely:

- 174 (1) the President of the Family Division³;
- 175 (2) one puisne judge⁴ attached to that Division;
- 176 (3) one district judge of the Principal Registry of the Family Division⁵;
- 177 (4) two circuit judges⁶;
- 178 (5) one district judge appointed under the County Courts Act 1984⁷;
- 179 (6) two persons who have a Supreme Court qualification within the meaning of the Courts and Legal Services Act 1990⁸;
- 180 (7) two persons who have been granted by an authorised body⁹ the right to conduct litigation in relation to all proceedings in the Supreme Court¹⁰;

and the persons so to act with the Lord Chancellor, other than the President of the Family Division, are to be appointed by the Lord Chancellor for such time as he may think fit¹¹.

Such rules may make different provision for different cases or different areas, including different provision for a specific court, or for specific proceedings, or a specific jurisdiction, specified in the rules¹² and may modify or exclude the application of any provision of the County Courts Act 1984 and provide for the enforcement in the High Court of orders made in a divorce county court¹³. They must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament¹⁴.

In exercise of the power so conferred the Lord Chancellor made the Family Proceedings Rules 1991¹⁵. Subject to the provisions thereof and of any enactment, the County Court Rules 1981¹⁶ and the Rules of the Supreme Court (Revision) 1965¹⁷ continue to apply, with the necessary modifications, to family proceedings in a county court and the High Court respectively¹⁸. However, the Civil Procedure Rules¹⁹ apply²⁰ in family proceedings and in the Family Division to any assessment of costs that takes place on or after 26 April 1999²¹. The Civil Procedure Rules also apply to committal applications²², to expert evidence in proceedings for ancillary relief²³ and to appeals to the Court of Appeal²⁴; and they apply to proceedings in the Family Division which invoke the jurisdiction of the High Court to grant declarations as to the best interests of incapacitated adults²⁵.

1 For these purposes, 'family proceedings' means proceedings which are family business; and 'family business' means business of any description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under the Supreme Court Act 1981 s 61, Sch 1 (as amended) (see PARA 617 post); Matrimonial and Family Proceedings Act 1984 s 32.

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 As to the puisne judges of the High Court see PARA 515 ante, paras 602, 619 post.

5 As to district judges in the Principal Registry of the Family Division see PARA 658 post.

6 As to circuit judges see PARA 522 et seq ante.

7 As to county court district judges see PARA 728 post.

8 As to when persons have such a qualification see PARA 575 note 15 ante.

9 Ie under the Courts and Legal Services Act 1990 Pt II (ss 17-70) (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 495 et seq.

10 Matrimonial and Family Proceedings Act 1984 s 40(1) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 50). The Matrimonial and Family Proceedings Act 1984 s 40(1) (as so amended) is without prejudice to the powers of the following authorities to make rules in respect of the matters referred to infra and rules in respect of those matters are to continue to be made by those authorities and are not to be made by the authority constituted by s 40(1) (as so amended): s 40(2). The rules and rule-making authorities are: (1) adoption rules made by the Lord Chancellor under the Adoption Act 1958 s 9(3) (repealed), the Adoption Act 1968 s 12(1) (repealed) or the Adoption Act 1976 s 66(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 207); (2) probate rules made by the President of the Family Division with the concurrence of the Lord Chancellor under the Supreme Court Act 1981 s 127 (see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 81 note 3); Matrimonial and Family Proceedings Act 1984 s 40(2).

11 Ibid s 40(3).

12 Ibid s 40(3A) (added by the Civil Procedure Act 1997 s 10, Sch 2 para 3).

13 Matrimonial and Family Proceedings Act 1984 s 40(4). As to the jurisdiction of county courts to award any relief which could have been awarded by the High Court where proceedings are transferred to a county court see s 38(5); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 745; and as to divorce county courts see PARA 707 note 8 post.

14 Ibid s 40(5). The Statutory Instruments Act 1946 (see STATUTES vol 44(1) (Reissue) PARA 1501 et seq) applies to a statutory instrument containing such rules as if the rules had been made by a minister of the Crown: Matrimonial and Family Proceedings Act 1984 s 40(5).

15 Ie the Family Proceedings Rules 1991, SI 1991/1247 (as amended): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1005.

16 Ie the County Court Rules 1981, SI 1981/1687 (as amended; revoked subject to savings): see CIVIL PROCEDURE vol 11 (2009) PARA 24.

17 Ie the Rules of the Supreme Court (Revision) 1965, SI 1965/1776 (as amended; revoked subject to savings): see CIVIL PROCEDURE vol 11 (2009) PARA 10.

18 Family Proceedings Rules 1991, SI 1991/1247, r 1.3(1) (amended by SI 1999/1012). For these purposes, any provision of the Family Proceedings Rules 1991, SI 1991/1247 (as amended) authorising or requiring anything to be done in family proceedings is to be treated as if it were, in the case of proceedings pending in a county court, a provision of the County Court Rules 1981, SI 1981/1687 (as amended) and, in the case of proceedings pending in the High Court, a provision of the Rules of the Supreme Court (Revision) 1965, SI 1965/1776 (as amended): Family Proceedings Rules 1991, SI 1991/1247, r 1.3(2). References in r 1.3 (as amended) to the County Court Rules 1981, SI 1981/1687 (as amended) and the Rules of the Supreme Court (Revision) 1965, SI 1965/1776 (as amended) are references to those Rules as in force immediately before 26 April 1999 and references thereto in the Family Proceedings Rules 1991, SI 1991/1247 (as amended) are to be read accordingly: Family Proceedings (Miscellaneous Amendments) Rules 1999, SI 1999/1012, r 3(1).

19 Ie CPR Pts 43, 44 (except CPR 44.9-44.12) and CPR Pts 47, 48 (see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1037, subject to the following modifications: (1) in CPR 43.2(1)(c)(ii), 'district judge' includes a district judge of the Principal Registry of the Family Division; (2) CPR r 44.3(2) (costs follow the event) does not apply.

20 lie in place of the Rules of the Supreme Court (Revision) 1965, SI 1965/1776, Ord 62 and the County Court Rules 1981, SI 1981/1687, Ord 38 (both revoked subject to transitional provisions): see CIVIL PROCEDURE vol 11 (2009) PARAS 10, 24.

21 Family Proceedings (Miscellaneous Amendments) Rules 1999, SI 1999/1012, r 4(1)-(3). As a general rule, however, no costs for work done before 26 April 1999 are to be disallowed if they would have been allowed on taxation before that date: r 4(3). As to costs in family proceedings see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1037; and as to costs generally see CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

22 See *Practice Direction* [2001] 2 All ER 704, sub nom *Practice Direction (Family Proceedings: Committal)* [2001] 1 WLR 1253.

23 See the Family Proceedings Rules 1991, SI 1991/1247, r 2.61C (as added); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 932.

24 See MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 737. For the purpose only of appeals to the Court of Appeal from cases in family proceedings, *Practice Direction--Appeals* PD 52 will apply with such modifications as may be required: para 2.2. As to civil appeals to the Court of Appeal generally see CIVIL PROCEDURE vol 12 (2009) PARA 1701 et seq.

25 See *Practice Direction (incapacitated adults: declaratory proceedings)* [2002] 1 All ER 794, [2002] 1 WLR 325, Fam D.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

575-578 Court Rules and Practice Directions

As to Supreme Court Rules see Constitutional Reform Act 2005 ss 45, 46; and PARA 601C.

576 Family proceedings rules

TEXT AND NOTES--For provision as to family procedure rules and practice directions see PARA 576A.

TEXT AND NOTES 10-14--1984 Act s 40 prospectively repealed: Courts Act 2003 Sch 8 para 278, Sch 10. For amendments to 1984 Act s 40 see Constitutional Reform Act 2005 Sch 4 para 380. See further 1984 Act s 40A (added by 2005 Act Sch 4 para 381) (process for making rules of court under 1984 Act s 40); 1984 Act s 40B (rules to be made if required by Lord Chancellor).

NOTE 10--1984 Act s 40(2) amended: Constitutional Reform Act 2005 Sch 1 para 18, Sch 18 Pt 1.

TEXT AND NOTE 13--Or made in a civil partnership proceedings county court: 1984 Act s 40(4) (amended by Civil Partnership Act 2004 Sch 27 para 95).

Such rules may also authorise, for the purposes of the law relating to contempt of court, the publication in such circumstances as may be specified of information

relating to family proceedings held in private: 1984 Act s 40(4)(aa) (added by Children Act 2004 s 62(5)).

TEXT AND NOTE 14--1984 Act s 40(5) repealed: Constitutional Reform Act 2005 Sch 18 Pt 2.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(6) PROCEDURAL MATTERS/(i) Court Rules and Practice Directions/576A. Family Procedure Rules and Practice Directions.

576A. Family Procedure Rules and Practice Directions.

1. Family Procedure Rules

The following provisions are in force for certain purposes: SI 2005/2744.

There are to be rules of court (to be called 'Family Procedure Rules') governing the practice and procedure to be followed in family proceedings¹ in (1) the High Court, (2) county courts, and (3) magistrates' courts². Family Procedure Rules are to be made by a committee known as the Family Procedure Rule Committee³. The power to make Family Procedure Rules includes power to make different provision for different areas, including different provision (a) for a specified court or description of courts, or (b) for specified descriptions of proceedings or a specified jurisdiction⁴. Any power to make Family Procedure Rules is to be exercised with a view to securing that (i) the family justice system is accessible, fair and efficient, and (ii) the rules are both simple and simply expressed⁵.

1 'Family proceedings', in relation to a court, means proceedings in that court which are family proceedings as defined by either (1) the Magistrates' Courts Act 1980 s 65 (see MAGISTRATES vol 29(2) (Reissue) PARA 739), or (2) the Matrimonial and Family Proceedings Act 1984 s 32 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 737): Courts Act 2003 s 75(3).

2 Ibid s 75(1). As to the Family Procedure Rules which have been made see the Family Procedure (Adoption) Rules 2005, SI 2005/2795 (as amended).

3 2003 Act s 75(2).

4 Ibid s 75(4).

5 Ibid s 75(5) (amended by Constitutional Reform Act 2005 Sch 4 para 338, Sch 18 Pt 2).

2. Further provision about scope of Family Procedure Rules

The following provisions are in force for certain purposes: SI 2005/2744.

Family Procedure Rules may not be made in respect of matters which may be dealt with in probate rules¹. Family Procedure Rules may (1) modify or exclude the application of any provision of the County Courts Act 1984, and (2) provide for the enforcement in the High Court of orders made in a divorce county court or civil partnership proceedings county court (within the meaning of Part 5 of the Matrimonial and Family Proceedings Act 1984)². Family Procedure Rules may, for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to family proceedings held in private³. Family Procedure Rules may modify the rules of evidence as they apply to family proceedings in any court within the scope of the rules⁴. Family Procedure Rules may apply any rules of court (including in particular Civil Procedure Rules) which relate to (a) courts which are outside the scope of Family Procedure Rules, or (b) proceedings other than family proceedings⁵.

Any rules of court, not made by the Family Procedure Rule Committee, which apply to proceedings of a particular kind in a court within the scope of Family Procedure Rules may be applied by Family Procedure Rules to family proceedings in such a court⁶. Where Family Procedure Rules may be made by applying other rules, the other rules may be applied (i) to any extent, (ii) with or without modification, and (iii) as amended from time to time⁷. Family Procedure Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions⁸.

1 Made under the Senior Courts Act 1981 s 127 (see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 81); Courts Act 2003 s 76(1) (amended by Constitutional Reform Act 2005 Sch 1 para 29).

2 2003 Act s 76(2) (amended by Civil Partnership Act 2004 Sch 27 para 172). See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

3 2003 Act s 76(2A) (added by the Children Act 2004 s 62(7)).

4 2003 Act s 76(3).

5 Ibid s 76(4). In s 76(4) and (5) 'rules of court' includes any provision governing the practice and procedure of a court which is made by or under an enactment: s 76(6). In the 2003 Act 'enactment' includes subordinate legislation and, except where otherwise provided, any reference to an enactment is to an enactment whenever passed or made; and 'subordinate legislation' here has the same meaning as in the Interpretation Act 1978: 2003 Act s 107(8).

6 Ibid s 76(5). See further NOTE 5.

7 Ibid s 76(7).

8 Ibid s 76(8).

3. Family Procedure Rule Committee

The Family Procedure Rule Committee is to consist of (1) the President of the Family Division, and (2) the persons currently appointed in accordance with specified provision¹. The persons to be appointed in accordance with such provision are (a) two judges of the Senior Courts, at least one of whom must be a puisne judge attached to the Family Division, (b) one circuit judge, (c) one district judge of the principal registry of the Family Division, (d) one district judge², (e) one District Judge (Magistrates' Courts), (f) one lay justice³, (g) one justices' clerk, (h) one person who has a Senior Courts qualification⁴, and particular experience of family practice in the High Court, (i) one person who has a Senior Courts qualification, and particular experience of family practice in county courts, (j) one person who has a Senior Courts qualification, and particular experience of family practice in magistrates' courts, (k) one person who (i) has been authorised by a relevant approved regulator⁵ to conduct litigation in relation to all proceedings in the Senior Courts, and (ii) has particular experience of family practice in the High Court, (l) one person who has been so authorised, and has particular experience of family practice in county courts, (m) one person who has been so authorised, and has particular experience of family practice in magistrates' courts, (n) one person nominated by CAFCASS, and (o) one person with experience in and knowledge of the lay advice sector or the system of justice in relation to family proceedings⁶. The Lord Chancellor may reimburse the members of the Family Procedure Rule Committee their travelling and out-of-pocket expenses⁷.

1 Ie currently appointed in accordance with the Courts Act 2003 s 77(1A) and (1B): s 77(1) (amended by Constitutional Reform Act 2005 Sch 4 para 339(2)). The Lord Chief Justice must appoint the persons falling within heads (a)-(f) in the text: 2003 Act s 77(1A) (added by 2005 Act Sch 4 para 339(3)). The Lord Chancellor must appoint the persons falling within heads (g)-(o) in the text: 2003 Act s 77(1B). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 77: s 77(7) (added by 2005 Act Sch 4 para 339(8)).

2 le appointed under the County Courts Act 1984 s 6: see PARA 728.

3 In the 2003 Act 'lay justice' has the meaning given by s 9 (see MAGISTRATES vol 29(2) (Reissue) PARA 506): s 107(5).

4 'Senior Courts qualification' has the meaning given by the Courts and Legal Services Act 1990 s 71 (see PARA 575): 2003 Act s 107(2); Constitutional Reform Act 2005 Sch 11 para 4.

5 'Relevant approved regulator' is to be construed in accordance with the Legal Services Act 2007 s 20(3) (see LEGAL PROFESSIONS vol 65 PARA 358): Courts Act 2003 s 77(8) (added by Legal Services Act 2007 Sch 21 para 144(4)).

6 Courts Act 2003 s 77(2) (amended by 2005 Act Sch 4 para 339(4), Sch 11 para 4; and Legal Services Act 2007 Sch 21 para 144(2)). Before appointing a person in accordance with the 2003 Act s 77(1A), the Lord Chief Justice must consult the Lord Chancellor and the President of the Family Division: s 77(3) (amended by 2005 Act Sch 4 para 339(5)). Before appointing a person in accordance with the 2003 Act s 77(1B), the Lord Chancellor must consult the Lord Chief Justice and, if the person falls within any of heads (h)-(m) in the text, must also consult any body which (1) has members eligible for appointment under the provision in question, and (2) is a relevant approved regulator in relation to the exercise of a right of audience or the conduct of litigation (or both) (see LEGAL PROFESSIONS vol 65 (2008) PARAS 497-498): 2003 Act s 77(5) (amended by 2005 Act Sch 4 para 339(7); and Legal Services Act 2007 Sch 21 para 144(3)).

The Lord Chancellor may by order (a) amend the 2003 Act s 77(2), and (b) make consequential amendments in any other provision of s 77: s 78(1) (amended by 2005 Act Sch 4 para 340(2)). The Lord Chancellor may make an order under the 2003 Act s 78 only with the concurrence of the Lord Chief Justice: s 78(1A) (added by 2005 Act Sch 4 para 340(3)). Before making an order under the 2003 Act s 78 the Lord Chancellor must consult the President of the Family Division: s 78(2). As to the power of the Lord Chancellor or Lord Chief Justice to make orders under the 2003 Act generally see s 108 (amended by 2005 Act Sch 4 para 348). The Lord Chief Justice may nominate a judicial office holder (as defined in 2005 Act s 109(4)) to exercise his functions under the 2003 Act s 78: s 78(3) (added by 2005 Act Sch 4 para 340(4)).

7 2003 Act s 77(6).

4. Process for making Family Procedure Rules

The following provisions are in force for certain purposes: SI 2005/2744.

The Family Procedure Rule Committee must, before making Family Procedure Rules (1) consult such persons as they consider appropriate, and (2) meet (unless it is inexpedient to do so)¹. Rules made by the Family Procedure Rule Committee must be (a) signed by a majority of the members of the Committee, and (b) submitted to the Lord Chancellor². The Lord Chancellor may allow or disallow rules so made³. If the Lord Chancellor disallows rules, he must give the Committee written reasons for doing so⁴. Rules so made and allowed by the Lord Chancellor (i) come into force on such day as the Lord Chancellor directs, and (ii) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by a minister of the Crown⁵.

If the Lord Chancellor gives the Family Procedure Rules Committee written notice that he thinks it is expedient for Family Procedure Rules to include provision that would achieve a purpose specified in the notice, the Committee must make such rules as it considers necessary to achieve the specified purpose⁶.

1 Courts Act 2003 s 79(1).

2 Ibid s 79(2).

3 Ibid s 79(3) (substituted by Constitutional Reform Act 2005 Sch 4 para 341(2)).

4 2003 Act s 79(4) (as substituted: see NOTE 3).

5 Ibid s 79(5) (amended by 2005 Act Sch 4 para 341(3)). In the 2003 Act 'minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975: 2003 Act s 107(7). A statutory instrument containing Family Procedure Rules is subject to annulment in pursuance of a resolution of either House of Parliament: s 79(6) (amended by 2005 Act Sch 18 Pt 2).

6 2003 Act s 79A(1), (2) (added by 2005 Act Sch 4 para 342). Those rules must be (1) made within a reasonable period after the Lord Chancellor gives notice to the Committee; (2) made in accordance with the 2003 Act s 79: s 79A(3) (as so added).

5. Power to amend legislation in connection with the rules

The following provisions are in force for certain purposes: SI 2005/2744.

The Lord Chancellor may, after consulting the Lord Chief Justice, by order amend, repeal or revoke any enactment to the extent that he considers necessary or desirable (1) in order to facilitate the making of Family Procedure Rules, or (2) in consequence of Family Procedure Rules¹.

1 Courts Act 2003 s 80(1) (amended by Constitutional Reform Act 2005 Sch 4 para 343(2), (3)), referring also to the 2003 Act s 75 (see PARA 576A.1), 76 (see PARA 576A.2) or 79 (see PARA 576A.4). As to the power of the Lord Chancellor or Lord Chief Justice to make orders under the 2003 Act generally see s 108 (amended by 2005 Act Sch 4 para 348).

The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 80: s 80(2) (added by 2005 Act Sch 4 para 343(4)).

6. Practice directions relating to family proceedings

Directions may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 as to the practice and procedure of (1) the civil division of the Court of Appeal, (2) the High court, (3) county courts, and (4) magistrates' courts, in family proceedings¹. Directions as to the practice and procedure of those courts in family proceedings given otherwise than under the above provision² may not be given without the approval of (1) the Lord Chancellor, and (2) the Lord Chief Justice³.

Head (1) above does not apply to directions to the extent that they consist of guidance about any of the following (a) the application or interpretation of the law; (b) the making of judicial decisions⁴. Head (1) above does not apply to directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be given only (i) after consulting the Lord Chancellor, and (ii) with the approval of the Lord Chief Justice⁵.

1 Courts Act 2003 s 81(1) (amended by Constitutional Reform Act 2005 Sch 2 para 9(2), Sch 4 para 344(2)). The power to give directions under the 2003 Act s 81(1) includes power (1) to vary or revoke directions as to the practice and procedure of any relevant court in family proceedings, whether given under s 81(1) or otherwise, (2) to give directions containing different provision for different cases (including different areas), and (3) to give directions containing provision for a specific court, for specific proceedings or for a specific jurisdiction: s 81(3) (amended by 2005 Act Sch 2 para 9(4), Sch 4 para 344(4)). In 2003 Act s 81 'relevant court' means a court listed in s 81(1): s 81(5) (added by 2005 Act Sch 4 para 344(5)).

2 Ie otherwise than under the 2003 Act s 81(1).

3 Ibid s 81(2) (amended by 2005 Act Sch 2 para 9(3)). Directions as to the practice and procedure of any relevant court in family proceedings (whether given under the 2003 Act s 81(1) or otherwise) may provide for any matter which, by virtue of the Civil Procedure Act 1997 Sch 1 para 3, may be provided for by Civil Procedure Rules: 2003 Act s 81(2A) (added by 2005 Act Sch 4 para 344(3)). In 2003 Act s 81 'Civil Procedure Rules' has the same meaning as in the Civil Procedure Act 1997: 2003 Act s 81(5) (added by 2005 Act Sch 4 para 344(5)).

4 2003 Act s 81(4) (added by 2005 Act Sch 2 para 9(5)).

5 2003 Act s 81(5) (as added: see NOTE 4).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

575-578 Court Rules and Practice Directions

As to Supreme Court Rules see Constitutional Reform Act 2005 ss 45, 46; and PARA 601C.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(6) PROCEDURAL MATTERS/(i) Court Rules and Practice Directions/577. Criminal appeal and Crown Court rules.

577. Criminal appeal and Crown Court rules.

Rules of court may be made for the purpose of regulating and prescribing the practice and procedure to be followed in the Crown Court¹ and the Criminal Division of the Court of Appeal². The power to make such rules is exercisable by the Lord Chancellor³ together with any four or more of the following persons, namely:

- 181 (1) the Lord Chief Justice⁴;
- 182 (2) two other judges of the Supreme Court⁵;
- 183 (3) two circuit judges⁶;
- 184 (4) the Registrar of Criminal Appeals (whose office is now is combined with that of Queen's Coroner and Attorney and Master of the Crown Office)⁷;
- 185 (5) a justice of the peace⁸;
- 186 (6) two persons who have a Supreme Court qualification within the meaning of the Courts and Legal Services Act 1990⁹; and
- 187 (7) two persons who have been granted by an authorised body, under Part II of that Act¹⁰, the right to conduct litigation in relation to all proceedings in the Supreme Court¹¹.

The persons listed above, acting in pursuance of this power, are known as 'the Crown Court Rule Committee'¹². The persons who are to act in pursuance of this power with the Lord Chancellor, other than those eligible to act by virtue of their office, must be appointed by the Lord Chancellor for such time as he may think fit¹³.

Without prejudice to the generality of the power to make such rules¹⁴, the matters about which rules of court may be made under these provisions include all matters of practice and procedure in the Supreme Court which were regulated or prescribed by rules of court immediately before 1 January 1982¹⁵. No provision of the Supreme Court Act 1981 or any other Act, or contained in any instrument made under any Act, which authorises or requires the making of rules of court about any particular matter or for any particular purpose or provides (in whatever words) that the power to make rules of court under these provisions is to include

power to make rules about any particular matter or for any particular purpose, is to be taken as derogating from the generality of the power to make rules which is set out above¹⁶.

Rules of court may amend or repeal any statutory provision relating to the practice and procedure of the Crown Court or the Criminal Division of the Court of Appeal so far as may be necessary in consequence of provision made by the rules¹⁷. Criminal Appeal Rules may require courts from which an appeal lies to the Criminal Division of the Court of Appeal to furnish that Division with any assistance or information which it may request for the purpose of exercising its jurisdiction¹⁸; and Crown Court Rules may amend or repeal any statutory provision about appeals to the Crown Court so far as it relates to the practice and procedure with respect to such appeals¹⁹.

No rule which may involve an increase of expenditure out of public funds may be made under these provisions except with the concurrence of the Treasury, but the validity of any rule so made is not to be called in question in any proceedings in any court either by the court or by any party to the proceedings on the ground only that it was a rule as to the making of which the concurrence of the Treasury was necessary and that the Treasury did not concur or is not expressed to have concurred²⁰.

Rules of court under these provisions must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament²¹.

The Crown Court Rules 1982²² and numerous amending instruments have been made under these powers. In relation to criminal appeals, the Criminal Appeal Rules 1968²³, the Criminal Appeal (References to the European Court) Rules 1972²⁴ and the Criminal Appeal (Reference of Points of Law) Rules 1973²⁵, which were all made under earlier legislation, continue to apply and now have effect as if made under these powers²⁶. The Criminal Appeal (Reviews of Sentencing) Rules 1989²⁷ and amendments to the Criminal Appeal Rules 1968²⁸ have, however, been made under these powers.

1 As to the Crown Court see PARA 621 post.

2 Supreme Court Act 1981 s 84(1) (s 84 amended by the Civil Procedure Act 1997 s 10, Sch 2 para 1(1), (4)). As to the Criminal Division of the Court of Appeal see PARAS 636, 640 post.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Supreme Court Act 1981 s 86(1)(a). As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 Ibid s 86(1)(b). As to the judges of the Supreme Court see PARA 515 ante, paras 602, 619, 633, 637 post.

6 Ibid s 86(1)(c). As to circuit judges see PARA 522 et seq ante.

7 Ibid s 86(1)(d); and see PARAS 654, 657 post.

8 Ibid s 86(1)(e). As to justices of the peace sitting as judges in the Crown Court see PARA 623 post.

9 Ibid s 86(1)(f), (s 86(1)(f), (g), (4) substituted by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 36(2)). As to when a person has such a qualification see PARA 575 note 15 ante. Before appointing a person under the Supreme Court Act 1981 s 86(1)(f) or (g) (as so substituted), the Lord Chancellor must consult any authorised body with members who are eligible for appointment under that provision: s 86(4) (as so substituted).

10 Ie under the Courts and Legal Services Act 1990 Pt II (ss 17-70) (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 495 et seq.

11 Supreme Court Act 1981 s 86(1)(g) (as substituted: see note 9 supra). As to the Lord Chancellor's duty to consult before appointing such persons see note 9 supra.

12 Ibid s 86(2).

- 13 Ibid s 86(3); and see note 9 supra.
- 14 Ie the generality of ibid s 84(1) (as amended): see the text and notes 1-2 supra.
- 15 Ibid s 84(2). 1 January 1982 is the commencement date of the Supreme Court Act 1981: see s 153(2).
- 16 Ibid s 84(3).
- 17 Ibid s 87(3) (amended by the Civil Procedure Act 1997 Sch 2 para 1(1), (6)).
- 18 Supreme Court Act 1981 s 87(4).
- 19 Ibid s 87(5).
- 20 Ibid s 87(7).
- 21 Ibid s 87(8). The Statutory Instruments Act 1946 (see STATUTES vol 44(1) (Reissue) PARA 1501 et seq) applies to a statutory instrument containing such rules in like manner as if the rules had been made by a minister of the Crown: Supreme Court Act 1981 s 87(8).
- 22 Ie the Crown Court Rules 1982, SI 1982/1109 (as amended).
- 23 Ie the Criminal Appeal Rules 1968, SI 1968/1262 (as amended).
- 24 Ie the Criminal Appeal (References to the European Court) Rules 1972, SI 1972/1786.
- 25 Ie the Criminal Appeal (Reference of Points of Law) Rules 1973, SI 1973/1114.
- 26 See the Interpretation Act 1978 s 17(2)(b); and STATUTES vol 44(1) (Reissue) PARA 1245.
- 27 Ie the Criminal Appeal (Reviews of Sentencing) Rules 1989, SI 1989/19.
- 28 See eg the Criminal Appeal (Amendment) Rules 2001, SI 2001/613.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

575-578 Court Rules and Practice Directions

As to Supreme Court Rules see Constitutional Reform Act 2005 ss 45, 46; and PARA 601C.

577 Criminal appeal and Crown Court rules

TEXT AND NOTES--For provision as to criminal procedure rules and practice directions see PARA 577A.

TEXT AND NOTES 1-13--1981 Act s 86(1) amended, s 86(2)-(4) substituted: Constitutional Reform Act 2005 Sch 4 para 137. See further 1981 Act s 86A (added by Constitutional Reform Act 2005 Sch 4 para 138) (process for making rules of court under the 1981 Act s 84); and 1981 Act s 86B (rules to be made if required by Lord Chancellor).

TEXT AND NOTES 1, 2--Replaced. Rules of court may now be made for the purpose of regulating and prescribing, except in relation to any criminal cause or matter, the practice and procedure to be followed in the Crown Court: 1981 Act s 84(1) (amended by SI 2004/2035).

TEXT AND NOTE 11--Now, head (7) two persons who have been authorised by a relevant approved regulator to conduct litigation in relation to all proceedings in the Senior Courts: 1981 Act s 86(1)(g) (amended by Constitutional Reform Act 2005 Sch 11 para 26(2); and Legal Services Act Sch 21 para 46(a)). 'Relevant approved regulator' is to be construed in accordance with the Legal Services Act 2007 s 20(3) (see LEGAL PROFESSIONS vol 65 (2008) PARA 358): 1981 Act s 86(7) (added by Legal Services Act Sch 21 para 46(b)).

TEXT AND NOTE 17--Now refers to rules of court made under the Senior Courts Act 1981 s 84; reference to the criminal division of the Court of Appeal omitted; and now refers to procedure (except so far as relating to criminal causes or matters): s 87(3) (amended by SI 2004/2035).

TEXT AND NOTE 18--Reference to Criminal Appeal Rules is now to Criminal Procedure Rules; reference to Crown Court Rules is now to Rules of court made under the 1981 Act s 84: s 87(4) (amended by SI 2004/2035).

TEXT AND NOTE 19--Now refers to such appeals (except so far as relating to criminal causes or matters): 1981 Act s 87(5) (amended by SI 2004/2035).

NOTES 22-27--Rules cited replaced by Criminal Procedure Rules 2005, SI 2005/384.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(6) PROCEDURAL MATTERS/(i) Court Rules and Practice Directions/577A. Criminal Procedure Rules and Practice Directions.

577A. Criminal Procedure Rules and Practice Directions.

1. Criminal Procedure Rules

Rules of court ('Criminal Procedure Rules') govern the practice and procedure to be followed in the criminal courts¹. Criminal Procedure Rules are made by a committee known as the Criminal Procedure Rule Committee². The power to make Criminal Procedure Rules includes power to make different provision for different cases or different areas, including different provision (1) for a specified court or description of courts, or (2) for specified descriptions of proceedings or a specified jurisdiction³. Any power to make Criminal Procedure Rules is to be exercised with a view to securing that (a) the criminal justice system is accessible, fair and efficient, and (b) the rules are both simple and simply expressed⁴.

1 Courts Act 2003 s 69(1). See the Criminal Procedure Rules 2005, SI 2005/384.

In the 2003 Act Pt 7 (ss 68-85) 'criminal court' means (1) the criminal division of the Court of Appeal; (2) when dealing with any criminal cause or matter (a) the Crown Court; (b) a magistrates' court: s 68.

2 Ibid s 69(2).

3 Ibid s 69(3).

4 Ibid s 69(4) (amended by Constitutional Reform Act 2005 Sch 4 para 332, Sch 18 Pt 2).

2. Criminal Procedure Rule Committee

The Criminal Procedure Rule Committee consists of (1) the Lord Chief Justice, and (2) the persons currently appointed in accordance with specified provision¹. The persons to be appointed in accordance with such provision are (a) a person nominated by the Lord Chancellor, (b) three persons each of whom is either a judge of the High Court or a judge of the Court of Appeal, (c) two circuit judges with particular experience of sitting in criminal courts², (d) one District Judge (Magistrates' Courts), (e) one lay justice³, (f) one justices' clerk, (g) the Director of Public Prosecutions or a person nominated by the Director, (h) two persons who have a Senior Courts qualification⁴ and who have particular experience of practice in criminal courts, (i) two persons who (i) have been authorised by a relevant approved regulator⁵ to conduct litigation in relation to all proceedings in the Senior Courts, and (ii) have particular experience of practice in criminal courts, (j) one person who appears to represent the Association of Chief Police Officers, and (k) two persons who appear to represent voluntary organisations with a direct interest in the work of criminal courts⁶. Before appointing a person under heads (a) to (e) above, other than a person nominated by the Lord Chancellor, the Lord Chief Justice must consult the Lord Chancellor⁷ and before appointing a person under heads (f) to (k) above, the Lord Chancellor must consult the Lord Chief Justice⁸. The Criminal Procedure Rule Committee is to be chaired by the Lord Chief Justice; and one of the judges appointed under head (b) above is to be his deputy⁹. The Lord Chancellor may reimburse (A) the travelling and out-of-pocket expenses of the members of the Criminal Procedure Rule Committee, and (B) authorised travelling and out-of-pocket expenses of persons invited to participate in the work of the Committee¹⁰.

1 The persons currently appointed in accordance with the Courts Act 2003 s 70(1A) and (1B): s 70(1) (amended by Constitutional Reform Act 2005 Sch 4 para 333(2)). The Lord Chief Justice must appoint the persons falling within heads (a)-(e) in the text: 2003 Act s 70(1A) (added by 2005 Act Sch 4 para 333(3)). The Lord Chancellor must appoint the persons falling within heads (f)-(k) in the text: 2003 Act s 70(1B) (as so added).

2 In the 2003 Act 'criminal court' has the meaning given by s 68 (see PARA 577A.1): s 107(3).

3 In the 2003 Act 'lay justice' has the meaning given by s 9 (see MAGISTRATES vol 29(2) (Reissue) PARA 506): s 107(5).

4 'Senior Courts qualification' has the meaning given by the Courts and Legal Services Act 1990 s 71 (see PARA 575): 2003 Act s 107(2); Constitutional Reform Act 2005 Sch 11 para 4.

5 'Relevant approved regulator' is to be construed in accordance with the Legal Services Act 2007 s 20(3) (see LEGAL PROFESSIONS vol 65 (2008) PARA 358): Courts Act 2003 s 70(2A) (added by Legal Services Act 2007 Sch 21 para 143(b)).

6 Courts Act 2003 s 70(2) (amended by 2005 Act Sch 4 para 333(4), Sch 11 para 4; Legal Services Act 2007 Sch 21 para 143(a); SI 2005/2625, and SI 2007/2128). The Lord Chancellor may by order (1) amend the 2003 Act s 70(2) or (3A), and (2) make consequential amendments in any other provision of s 70: s 71(1) (amended by 2005 Act Sch 4 para 334(2)). The Lord Chancellor may make an order under the 2003 Act s 71 only with the concurrence of the Lord Chief Justice: s 71(2) (substituted by 2005 Act Sch 4 para 334(3)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 71: s 71(3) (added by 2005 Act Sch 4 para 334(3)). As to the power of the Lord Chancellor or Lord Chief Justice to make orders under the 2003 Act generally see s 108 (amended by 2005 Act Sch 4 para 348).

7 2003 Act s 70(3) (substituted by 2005 Act Sch 4 para 333(5), amended by the Secretary of State for Justice Order 2007, SI 2007/2128).

8 2003 Act s 70(3A) (added by 2005 Act Sch 4 para 333(5)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 2003 Act s 70: s 70(5A) (added by 2005 Act Sch 4 para 333(6)).

9 2003 Act s 70(4).

10 Ibid s 70(5).

3. Process for making Criminal Procedure Rules

The Criminal Procedure Rule Committee must, before making Criminal Procedure Rules (1) consult such persons as they consider appropriate, and (2) meet (unless it is inexpedient to do so)¹. Rules made by the Criminal Procedure Rule Committee must be (a) signed by a majority of the members of the Committee, and (b) submitted to the Lord Chancellor². The Lord Chancellor may allow or disallow rules so made³. If the Lord Chancellor disallows rules, he must give the Committee written reasons for doing so⁴. Rules so made and allowed by the Lord Chancellor (i) come into force on such day as the Lord Chancellor directs, and (ii) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by a minister of the Crown⁵.

If the Lord Chancellor gives the Criminal Procedure Rules Committee written notice that he thinks it is expedient for Criminal Procedure Rules to include provision that would achieve a purpose specified in the notice, the Committee must make such rules as it considers necessary to achieve the specified purpose⁶.

1 Courts Act 2003 s 72(1).

2 Ibid s 72(2).

3 Ibid s 72(3) (substituted by Constitutional Reform Act 2005 Sch 4 para 335(2), amended by the Secretary of State for Justice Order 2007, SI 2007/2128).

4 2003 Act s 72(4) (as substituted: see NOTE 3).

5 Ibid s 72(5) (amended by 2005 Act Sch 4 para 335(3)). In the 2003 Act 'minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975: 2003 Act s 107(7). A statutory instrument containing Criminal Procedure Rules is subject to annulment in pursuance of a resolution of either House of Parliament: s 72(6) (amended by 2005 Act Sch 18 Pt 2).

6 2003 Act s 72A(1), (2) (added by 2005 Act Sch 4 para 336). Those rules must be (1) made within a reasonable period after the Lord Chancellor gives notice to the Committee; (2) made in accordance with the 2003 Act s 72: s 72A(3) (as so added).

4. Power to amend legislation in connection with the rules

The Lord Chancellor may, after consulting the Lord Chief Justice, by order amend, repeal or revoke any enactment¹ to the extent that he considers necessary or desirable (1) in order to facilitate the making of Criminal Procedure Rules, or (2) in consequence of Criminal Procedure Rules².

1 In the Courts Act 2003 'enactment' includes subordinate legislation and, except where otherwise provided, any reference to an enactment is to an enactment whenever passed or made; and 'subordinate legislation' here has the same meaning as in the Interpretation Act 1978: 2003 Act s 107(8).

2 In consequence of ibid s 69 (see PARA 577A.1) or 72 (see PARA 577A.3) or Criminal Procedure Rules: s 73(1) (amended by Constitutional Reform Act 2005 Sch 4 para 337(2), (3), and the Secretary of State for Justice Order 2007, SI 2007/2128). As to the power of the Lord Chancellor or Lord Chief Justice to make orders under the 2003 Act generally see s 108 (amended by 2005 Act Sch 4 para 348).

The Lord Chief Justice may nominate a judicial office holder (as defined in s 109(4)) to exercise his functions under the 2003 Act s 73: s 73(2) (added by 2005 Act Sch 4 para 337(4)).

5. Practice directions as to practice and procedure of the criminal courts

Directions may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 as to the practice and procedure of the criminal courts¹. Directions as to the practice

and procedure of the criminal courts given otherwise than under the above provision² may not be given without the approval of (1) the Lord Chancellor, and (2) the Lord Chief Justice³.

Head (1) above does not apply to directions to the extent that they consist of guidance about any of the following (a) the application or interpretation of the law; (b) the making of judicial decisions⁴. Head (1) above does not apply to directions to the extent that they consist of criteria for determining which judges may be allocated to hear particular categories of case; but the directions may, to that extent, be given only (i) after consulting the Lord Chancellor, and (ii) with the approval of the Lord Chief Justice⁵.

1 Courts Act 2003 s 74(1) (amended by Constitutional Reform Act 2005 Sch 2 para 8(2)). The power to give directions under the 2003 Act s 74(1) includes power (1) to vary or revoke directions as to the practice and procedure of the criminal courts (or any of them), whether given under s 74(1) or otherwise, (2) to give directions containing different provision for different cases (including different areas), and (3) to give directions containing provision for a specific court, for specific proceedings or for a specific jurisdiction: s 74(3) (amended by 2005 Act Sch 2 para 8(4)).

2 Ie otherwise than under the 2003 Act s 74(1).

3 Ibid s 74(2) (amended by 2005 Act Sch 2 para 8(3)).

4 2003 Act s 74(4) (s 74(4), (5) substituted by 2005 Act Sch 2 para 8(5)).

5 2003 Act s 74(5) (as substituted: see NOTE 4).

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

575-578 Court Rules and Practice Directions

As to Supreme Court Rules see Constitutional Reform Act 2005 ss 45, 46; and PARA 601C.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(6) PROCEDURAL MATTERS/(i) Court Rules and Practice Directions/578. Special rules.

578. Special rules.

Special rules applying to proceedings of any particular kind in the Supreme Court¹, which are rules made by an authority other than the Civil Procedure Rule Committee² or the Crown Court Rule Committee³ under any provision⁴ of the Supreme Court Act 1981 or any other Act may apply any Criminal Appeal Rules or Crown Court Rules⁵, or Civil Procedure Rules⁶, to proceedings to which the special rules apply⁷. Similarly, Criminal Appeal Rules or Crown Court Rules may apply any special rules, or Civil Procedure Rules, to proceedings to which the

Criminal Appeal Rules or Crown Court Rules apply⁸. Where rules may be applied under these provisions, they may be applied to any extent, with or without modification and as amended from time to time⁹.

Rules made with regard to particular proceedings are, with the exception of family proceedings rules¹⁰, discussed elsewhere in this work¹¹.

- 1 As to the Supreme Court see PARA 601 post.
- 2 As to the Civil Procedure Rule Committee see PARA 575 ante.
- 3 As to the Crown Court Rule Committee see PARA 577 ante.
- 4 Ie any provision which (in whatever words) confers on that authority power to make rules in relation to proceedings of that kind in the Supreme Court: Supreme Court Act 1981 s 84(9) (s 84(9) amended, s 84(5), (6) substituted and s 84(5A) added, by the Civil Procedure Act 1997 s 20, Sch 2 para 1(1), (4)).
- 5 Ie any rules made under the Supreme Court Act 1981 s 84 (as amended): see PARA 577 ante.
- 6 As to Civil Procedure Rules see PARA 575 ante.
- 7 Supreme Court Act 1981 s 84(5) (as substituted: see note 4 supra).
- 8 Ibid s 84(5A) (as added: see note 4 supra).
- 9 Ibid s 84(6) (as substituted: see note 4 supra).
- 10 As to family proceedings rules see PARA 576 ante.
- 11 See eg BANKRUPTCY AND INDIVIDUAL INSOLVENCY; CHILDREN AND YOUNG PERSONS; COMPANIES.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

575-578 Court Rules and Practice Directions

As to Supreme Court Rules see Constitutional Reform Act 2005 ss 45, 46; and PARA 601C.

578 Special rules

TEXT AND NOTES 1-9--See further 1981 Act s 86A (ss 86A, 86B added by Constitutional Reform Act 2005 Sch 4 para 138) (process for making rules of court under the 1981 Act s 84); and 1981 Act s 86B (as so added) (rules to be made if required by Lord Chancellor).

TEXT AND NOTE 2--Refers also an authority other than the Family Procedure Rule Committee (see PARA 576A.3) or the Criminal Procedure Rule Committee (see PARA

577A.2): 1981 Act s 84(9) (amended by the Courts Act 2003 (Consequential Amendments) Order 2004, SI 2004/2035).

TEXT AND NOTES 6-8--References to Civil Procedure Rules are now to Civil Procedure Rules, Criminal Procedure Rules, or Family Procedure Rules: 1981 Act s 84(5), (5A) (amended by SI 2004/2035).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/3. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL/(6) PROCEDURAL MATTERS/(ii) Allocation of Business between High Court and County Courts/579-600. In general.

(ii) Allocation of Business between High Court and County Courts

579-600. In general.

The Lord Chancellor¹ may by order² make provision:

- 188 (1) conferring jurisdiction on the High Court³ in relation to proceedings in which county courts⁴ have jurisdiction⁵;
- 189 (2) conferring jurisdiction on county courts in relation to proceedings in which the High Court has jurisdiction⁶;
- 190 (3) allocating proceedings to the High Court or to county courts⁷;
- 191 (4) specifying proceedings which may be commenced only in the High Court⁸;
- 192 (5) specifying proceedings which may be commenced only in a county court⁹;
- 193 (6) specifying proceedings which may be taken only in the High Court¹⁰;
- 194 (7) specifying proceedings which may be taken only in a county court¹¹.

Any such order may differentiate between categories of proceedings by reference to such criteria as the Lord Chancellor sees fit to specify in the order¹² and the criteria so specified may, in particular, relate to the value of a claim (as defined by the order), the nature of the proceedings, the parties to the proceedings, the degree of complexity likely to be involved in any aspect of the proceedings and the importance of any question likely to be raised by, or in the course of, the proceedings¹³.

Any such order may amend or repeal any provision made by any enactment other than the Courts and Legal Services Act 1990 or made under any enactment and relating to the jurisdiction, practice or procedure of the Supreme Court¹⁴ or the jurisdiction, practice or procedure of any county court, so far as the Lord Chancellor considers it to be necessary, or expedient, in consequence of any provision made by the order¹⁵. Any such order may make such incidental or transitional provision as the Lord Chancellor considers necessary, or expedient, in consequence of any provision made by the order¹⁶. No such order may, however, be made so as to confer jurisdiction on any county court to hear any application for judicial review¹⁷.

Before making any such order the Lord Chancellor must consult the Lord Chief Justice¹⁸, the Master of the Rolls¹⁹, the President of the Family Division²⁰, the Vice-Chancellor²¹ and the Senior Presiding Judge²².

Within one year of the coming into force of the first order made under these provisions, and annually thereafter, the Lord Chancellor must prepare and lay before both Houses of Parliament a report as to the business of the Supreme Court and county courts²³.

In the exercise of the power conferred by these provisions, the Lord Chancellor has made the High Court and County Courts Jurisdiction Order 1991²⁴ under which proceedings (whether for

damages or for a specified sum) may not be started in the High Court unless the value of the claim is more than £15,000²⁵ and proceedings which include a claim for damages in respect of personal injuries must not be started in the High Court unless the value of the claim is £50,000 or more²⁶. The detailed provisions of that order are discussed below and elsewhere in this work²⁷.

Provision is also made by the Civil Procedure Rules and the relevant practice direction supplementary thereto as to the allocation of business between the High Court and county courts²⁸.

Proceedings commenced in the High Court may be transferred to a county court, and vice versa²⁹.

The allocation of business between the different Divisions of the High Court is discussed below³⁰.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 The power to make such orders is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Courts and Legal Services Act 1990 s 120(1), (6). Any such order may make different provision for different cases or classes of case: s 120(2).

3 As to the jurisdiction of the High Court see PARAS 606-609 post.

4 As to county courts see PARA 701 et seq post.

5 Courts and Legal Services Act 1990 s 1(1)(a).

6 Ibid s 1(1)(b). An order under s 1(1)(b), (e) or (g) may specify one or more particular county courts in relation to the proceedings so specified: s 1(4). Any jurisdiction exercisable by a county court, under any provision made by virtue of s 1(4), is exercisable throughout England and Wales: s 1(5).

7 Ibid s 1(1)(c).

8 Ibid s 1(1)(d).

9 Ibid s 1(1)(e); and see note 6 supra. For these purposes, the commencement of proceedings may include the making of any application in anticipation of any proceedings or in the course of any proceedings: s 1(11).

10 Ibid s 1(1)(f).

11 Ibid s 1(1)(g); and see note 6 supra.

12 Ibid s 1(2). This is without prejudice to the generality of s 120(2) (see note 2 supra): s 1(2).

13 Ibid s 1(3).

14 As to the Supreme Court see PARA 601 post.

15 Courts and Legal Services Act 1990 s 1(7)(a), (8).

16 Ibid s 1(7)(b).

17 Ibid s 1(10). As to judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

18 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

19 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

20 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

21 As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

22 Courts and Legal Services Act 1990 s 1(9). As to the Senior Presiding Judge see PARA 504 ante.

23 Ibid s 1(12). The annual report and accounts of the Court Service are prepared and laid before Parliament in fulfillment of this obligation: see PARA 502 ante.

24 The High Court and County Courts Jurisdiction Order 1991, SI 1991/724 (as amended), which came into force on 1 July 1991: see art 1.

25 See ibid art 4A (added by SI 1999/1014).

26 See the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 5 (amended by SI 1999/1014).

27 See PARA 721 post; and CIVIL PROCEDURE vol 11 (2009) PARAS 58, 116.

28 See CPR 7.1; *Practice Direction--How to Start Proceedings--the Claim Form* PD 7A; and CIVIL PROCEDURE vol 11 (2009) PARA 116.

29 See CIVIL PROCEDURE vol 11 (2009) PARAS 66, 69, 70.

30 See PARA 610 et seq post.

UPDATE

501-579 The Administration of the [Senior Courts] and County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

579-600 In general

TEXT AND NOTES 1-23--1990 Act s 1(9) amended, s 1(1A), (13) added: Constitutional Reform Act 2005 Sch 4 para 212. See also s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.

TEXT AND NOTE 25--Proceedings may now not be started in the High Court unless the value of the claim is more than £25,000: SI 1991/724 art 4A (substituted by SI 2009/577).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601. Constitution of the Supreme Court.

5. THE [SENIOR COURTS] OF ENGLAND AND WALES

(1) CONSTITUTION

601. Constitution of the Supreme Court.

The Supreme Court of Judicature was constituted by the Supreme Court of Judicature Act 1873¹, which provided for the consolidation into one Supreme Court of Judicature of the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy². Under the Courts Act 1971³, the Supreme Court of Judicature was reconstituted with effect from 1 January 1972 as Her Majesty's Court of Appeal⁴ and Her Majesty's High Court of Justice, together with the Crown Court⁵.

With effect from 1 January 1982⁶, the Supreme Court became known as the Supreme Court of England and Wales⁷. The Supreme Court now consists of the Court of Appeal⁸, the High Court⁹ and the Crown Court¹⁰, each of which has such jurisdiction as is conferred on it by or under the Supreme Court Act 1981 or any other Act¹¹. The Lord Chancellor is the president of the Supreme Court¹².

The buildings erected under the Courts of Justice Building Act 1865 and the Courts of Justice Concentration (Site) Act 1865 are styled 'The Royal Courts of Justice'¹³.

1 It was originally intended that the Supreme Court of Judicature Act 1873 should come into force on 2 November 1874 (see s 2 (repealed)), but the commencement was postponed until 1 November 1875 by the Supreme Court of Judicature (Commencement) Act 1874 s 2 (repealed). See also note 2 infra.

2 Supreme Court of Judicature Act 1873 s 3 (repealed). For the constitution of this court see PARA 606 note 8 post. The London Court of Bankruptcy was not in fact consolidated with the Supreme Court until after 31 December 1883: Supreme Court of Judicature Act 1875 s 9 (repealed); Bankruptcy Act 1883 ss 3, 93 (repealed).

3 See the Courts Act 1971 s 1 (repealed).

4 The Court of Appeal was originally intended in 1872 to be the upper division of a court supreme in all respects and destined to absorb the appellate jurisdiction of both the House of Lords and Privy Council: see the address in 1950 by Lord Asquith printed in 1 Journal of the Society of Public Teachers of Law 350.

5 Supreme Court of Judicature (Consolidation) Act 1925 s 1; Courts Act 1971 s 1(1) (both repealed). The Crown Court was established by the Courts Act 1971 s 4(1) (repealed): see PARA 621 et seq post.

6 See the Supreme Court Act 1981 s 153(2).

7 Ibid s 1(1).

8 As to the Court of Appeal see PARA 637 et seq post.

9 As to the High Court see PARA 602 et seq post.

10 As to the Crown Court see PARA 621 et seq post.

11 Supreme Court Act 1981 s 1(1).

12 Ibid s 1(2). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

13 See the Supreme Court of Judicature (Consolidation) Act 1925 s 222 (repealed). The Courts of Justice Building Act 1865 and the Courts of Justice Concentration (Site) Act 1865 have also been repealed. As to the provision of accommodation for the Supreme Court see the Courts Act 1971 s 28 (as amended); and PARA 513 ante; as to the location of the courts see PARAS 510-512 ante. For the purposes of the rules governing court funds, 'the Royal Courts of Justice' does not include district registries: see the Court Funds Rules 1987, SI 1987/821, r 2(2); and CIVIL PROCEDURE vol 12 (2009) PARA 1553. As to district registries see PARA 646 post.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

601 Constitution of the [Senior Courts]

TEXT AND NOTES--The following provisions come into force on 1 October 2009: SI 2009/1604. There is to be a Supreme Court of the United Kingdom: Constitutional Reform Act 2005 s 23(1). The Court consists of 12 judges appointed by Her Majesty by letters patent: s 23(2). Her Majesty may from time to time by Order in Council amend s 23(2) so as to increase or further increase the number of judges of the Court: s 23(3). No recommendation may be made to Her Majesty in Council to make an Order under s 23(3) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament: s 23(4). Her Majesty may by letters patent appoint one of the judges to be President and one to be Deputy President of the Court: s 23(5). The judges other than the President and Deputy President are to be styled 'Justices of the Supreme Court': s 23(6). The Court is to be taken to be duly constituted despite any vacancy among the judges of the Court or in the office of President or Deputy President: s 23(7). For temporary modifications see Constitutional Reform Act 2005 (Temporary Modifications) Order 2006, SI 2006/227. On the commencement of the 2005 Act s 23 (ie 1 October 2009) (1) the persons who immediately before that commencement are Lords of Appeal in Ordinary become judges of the Supreme Court, (2) the person who immediately before that commencement is the senior Lord of Appeal in Ordinary becomes the President of the Court, and (3) the person who immediately before that commencement is the second senior Lord of Appeal in Ordinary becomes the Deputy President of the Court: s 24.

For further provision relating to the Supreme Court of the United Kingdom see PARAS 521A-521C and PARAS 601A-601I.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601A. Supreme Court: jurisdiction, relation to other courts etc.

601A. Supreme Court: jurisdiction, relation to other courts etc.

The following provisions are in force on 1 October 2009: SI 2009/1604.

1. Jurisdiction

The Supreme Court¹ is a superior court of record². An appeal lies to the Supreme Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings³. An appeal lies to the Supreme Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of these provisions⁴. Provision is made (1) transferring other jurisdiction from the House of Lords to the Supreme Court, (2) transferring devolution jurisdiction from the Judicial Committee of the Privy

Council to the Supreme Court, and (3) making other amendments relating to jurisdiction⁵. The Supreme Court has power to determine any question necessary to be determined for the purposes of doing justice in an appeal to it under any enactment⁶.

1 In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

2 Ibid s 40(1). As to superior and inferior courts see PARA 309. As to courts of record see PARA 308.

3 Ibid s 40(2). An appeal under s 40(2) lies only with the permission of the Court of Appeal or the Supreme Court; but this is subject to provision under any other enactment restricting such an appeal: s 40(6). For the meaning of 'enactment' see s 140.

4 I.e. the commencement of ibid s 40: s 40(3). Section 40 comes into force on 1 October 2009: SI 2009/1604.

5 See 2005 Act s 40(4), Sch 9 (Sch 9 amended by the Police and Justice Act 2006 Sch 13 para 35).

6 2005 Act s 40(5).

2. Relation to other courts etc

Nothing in Part 3 of the Constitutional Reform Act 2005¹ is to affect the distinctions between the separate legal systems of the parts of the United Kingdom². A decision of the Supreme Court on appeal from a court of any part of the United Kingdom, other than a decision on a devolution matter³, is to be regarded as the decision of a court of that part of the United Kingdom⁴. A decision of the Supreme Court on a devolution matter (1) is not binding on that Court when making such a decision; (2) otherwise, is binding in all legal proceedings⁵.

1 I.e. the Constitutional Reform Act 2005 ss 23-60, Schs 8-11.

2 Ibid s 41(1). In Pt 3 'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland: s 60(1).

3 In ibid s 41 'devolution matter' means (1) a question referred to the Supreme Court under the Scotland Act 1998 s 33 or the Northern Ireland Act 1998 s 11; (2) a devolution issue as defined in the Government of Wales Act 2006 Sch 9, the Scotland Act 1998 Sch 6 or the Northern Ireland Act 1998 Sch 10: Constitutional Reform Act 2005 s 41(4) (amended by SI 2007/1388, SI 2009/2958).

4 2005 Act s 41(2).

5 Ibid s 41(3).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601B. Supreme Court: composition for proceedings.

601B. Supreme Court: composition for proceedings.

The following provisions are in force on 1 October 2009: SI 2009/1604.

1. Composition

The Supreme Court¹ is duly constituted in any proceedings only if all of the following conditions are met (1) the Court consists of an uneven number of judges; (2) the Court consists of at least three judges; (3) more than half of those judges are permanent judges². Heads (1) and (2) above are subject to any directions³ that in specified⁴ proceedings the Court is to consist of a specified number of judges that is both uneven and greater than three⁵. Head (2) above is subject to any directions that in specified descriptions of proceedings the Court is to consist of a specified minimum number of judges that is greater than three⁶.

1 In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

2 Ibid s 42(1). In s 42 references to permanent judges are references to those judges of the Court who are not acting judges under s 38 (see PARA 521C.1): s 42(5)(c).

3 In ibid s 42 'directions' means directions given by the President of the Court: s 42(5)(a).

4 In ibid s 42 'specified', in relation to directions, means specified in those directions: s 42(5)(b).

5 Ibid s 42(2).

6 Ibid s 42(3).

Section 42 is subject to s 43 (see PARA 601B.2): s 42(4). Sections 42 and 43 apply to the constitution of the Court in any proceedings from the time judges are designated to hear the proceedings: s 42(6).

2. Changes in composition

The following provisions¹ apply if in any proceedings the Court ceases to be duly constituted² because one or more members of the Court are unable to continue³. The presiding judge⁴ may direct that the Court is still duly constituted in the proceedings⁵. The presiding judge may give a direction under these provisions only if (1) the parties agree; (2) the Court still consists of at least three judges (whether the number of judges is even or uneven); (3) at least half of those judges are permanent judges⁶.

1 In the Constitutional Reform Act 2005 s 43.

2 In accordance with ibid s 42 (see PARA 601B.1) or in accordance with a direction under s 43.

3 Ibid s 43(1).

4 In ibid s 43 'presiding judge' means the judge who is to preside, or is presiding, over proceedings: s 43(6)(a).

5 Ibid s 43(2). See further NOTE 6.

6 Ibid s 43(3). In s 43 references to permanent judges have the same meaning as in s 42 (see PARA 601B.1): s 43(6)(b). Section 42(2) and (3) is subject to directions given by the President of the Court: s 42(4).

If in any proceedings the Court is duly constituted under s 43 with an even number of judges, and those judges are evenly divided, the case is to be re-argued in a Court which is constituted in accordance with s 42: s 43(5).

UPDATE**601-671 The [Senior Courts] of England and Wales**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601C. Supreme Court: practice and procedure.

601C. Supreme Court: practice and procedure.

The following provisions are all in force by 1 October 2009: SI 2006/228, SI 2009/1604.

1. Specially qualified advisers

If the Supreme Court¹ thinks it expedient in any proceedings, it may hear and dispose of the proceedings wholly or partly with the assistance of one or more specially qualified advisers appointed by it². Any remuneration payable to such an adviser is to be determined by the Court unless agreed between the adviser and the parties to the proceedings³. Any remuneration forms part of the costs of the proceedings⁴.

1 In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

2 Ibid s 44(1).

3 Ibid s 44(2).

4 Ibid s 44(3).

2. Making of rules

For temporary modifications see Constitutional Reform Act 2005 (Temporary Modifications) Order 2006, SI 2006/227.

The President of the Supreme Court may make rules (to be known as 'Supreme Court Rules') governing the practice and procedure to be followed in the Court¹. The power to make Supreme Court Rules includes power to make different provision for different cases, including different provision (1) for different descriptions of proceedings, or (2) for different jurisdiction of the Supreme Court². The President must exercise the power to make Supreme Court Rules with a view to securing that (a) the Court is accessible, fair and efficient, and (b) the rules are both simple and simply expressed³. Before making Supreme Court Rules the President must consult all of the following (i) the Lord Chancellor; (ii) specified bodies⁴; (iii) such other bodies that

represent persons likely to be affected by the Rules as the President considers it appropriate to consult⁵.

1 Constitutional Reform Act 2005 s 45(1). See the Supreme Court Rules 2009, SI 2009/1603. The President of the Supreme Court has also issued the following practice directions: *Supreme Court Practice Direction 1: General Note and the Jurisdiction of the Supreme Court* (unreported); *Supreme Court Practice Direction 2: The Registry of the Supreme Court* (unreported); *Supreme Court Practice Direction 3: Applications for Permission to Appeal* (unreported); *Supreme Court Practice Direction 4: Notice of Appeal* (unreported); *Supreme Court Practice Direction 5: Papers for the Appeal Hearing* (unreported); *Supreme Court Practice Direction 6: The Appeal Hearing* (unreported); *Supreme Court Practice Direction 7: Applications, Documents, Forms and Orders* (unreported); *Supreme Court Practice Direction 8: Miscellaneous Matters* (unreported); *Supreme Court Practice Direction 9: The Human Rights Act 1998* (unreported); *Supreme Court Practice Direction 10: Devolution Jurisdiction* (unreported); *Supreme Court Practice Direction 11: The European Court of Justice* (unreported); *Supreme Court Practice Direction 12: Criminal Proceedings* (unreported); *Supreme Court Practice Direction 13: Costs* (unreported); *Supreme Court Practice Direction 14: Filing Documents in the Registry of the Supreme Court by Electronic Means* (unreported).

2 Constitutional Reform Act 2005 s 45(2).

3 Ibid s 45(3).

4 See the bodies listed in ibid s 45(5). The bodies referred to in head (ii) in the text are the General Council of the Bar of England and Wales; the Law Society of England and Wales; the Faculty of Advocates of Scotland; the Law Society of Scotland; the General Council of the Bar of Northern Ireland; the Law Society of Northern Ireland: s 45(5).

5 Ibid s 45(4).

3. Procedure after rules made

For temporary modifications see Constitutional Reform Act 2005 (Temporary Modifications) Order 2006, SI 2006/227.

Supreme Court Rules made by the President of the Supreme Court must be submitted by him to the Lord Chancellor¹. Supreme Court Rules submitted to the Lord Chancellor (1) come into force on such day as the Lord Chancellor directs, and (2) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 applies as if the instrument contained rules made by a Minister of the Crown². A statutory instrument containing Supreme Court Rules is subject to annulment in pursuance of a resolution of either House of Parliament³.

1 Constitutional Reform Act 2005 s 46(1).

2 Ibid s 46(2). In the Constitutional Reform Act 2005 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975: 2005 Act s 142.

3 Ibid s 46(3).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601D. Supreme Court: staff and resources.

601D. Supreme Court: staff and resources.

1. Chief executive

The Supreme Court¹ is to have a chief executive². The Lord Chancellor must appoint the chief executive, after consulting the President of the Court³. The President of the Court may delegate to the chief executive any of these functions⁴ (1) functions of the President⁵; (2) non-judicial functions of the Court⁶. The chief executive must carry out his functions⁷ in accordance with any directions given by the President of the Court⁸.

1 In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

2 Ibid s 48(1).

3 Ibid s 48(2).

4 In the Constitutional Reform Act 2005 'functions' includes powers and duties: s 142.

5 Under ibid s 49(1): see PARA 601D.2.

6 Ibid s 48(3).

7 Under ibid s 48(3) or otherwise.

8 Ibid s 48(4).

2. Officers and staff

The President of the Supreme Court may appoint officers and staff of the Court¹. It is for the chief executive of the Supreme Court to determine these matters with the agreement of the Lord Chancellor (1) the number of officers and staff of the Court; (2) the terms on which officers and staff are to be appointed². The civil service pension arrangements³ for the time being in force apply (with any necessary adaptations) to the chief executive of the Court, and to persons appointed⁴, as they apply to other persons employed in the civil service of the State⁵.

1 Constitutional Reform Act 2005 s 49(1).

2 Ibid s 49(2). Head (2) in the TEXT is subject to s 49(3): s 49(2).

3 In ibid s 49(3) 'the civil service pension arrangements' means (1) the principal civil service pension scheme (within the meaning of the Superannuation Act 1972 s 2), and (2) any other superannuation benefits for which provision is made under or by virtue of the Superannuation Act 1972 s 1 for or in respect of persons in employment in the civil service of the State: Constitutional Reform Act 2005 s 49(4).

4 Under ibid s 49(1).

5 Ibid s 49(3).

3. Accommodation and other resources

The Lord Chancellor must ensure that the Supreme Court is provided with the following (1) such court-houses¹, offices and other accommodation as the Lord Chancellor thinks are appropriate for the Court to carry on its business; (2) such other resources as the Lord Chancellor thinks are appropriate for the Court to carry on its business². The Lord Chancellor may discharge the above duty³ by (a) providing accommodation or other resources, or (b) entering into arrangements with any other person for the provision of accommodation or other resources⁴.

1 In the Constitutional Reform Act 2005 s 50 'court-house' means any place where the Court sits, including the precincts of any building in which it sits: s 50(5).

2 Ibid s 50(1). The Scottish Ministers may make payments by way of contribution to the costs incurred by the Lord Chancellor in providing the Court with resources in accordance with head (2) in the text: s 50(4).

3 Ie the duty under ibid s 50(1).

4 Ibid s 50(2). The powers to acquire land for the public service conferred by (1) the Commissioners of Works Act 1852 s 2 (acquisition by agreement), and (2) the Town and Country Planning Act 1990 s 228(1) (compulsory acquisition), are to be treated as including power to acquire land for the purpose of its provision under arrangements under head (b) in the text: Constitutional Reform Act 2005 s 50(3).

4. System to support Court in carrying on business

The chief executive of the Supreme Court must ensure that the Court's resources are used to provide an efficient and effective system to support the Court in carrying on its business¹. In particular (1) appropriate services must be provided for the Court; (2) the accommodation provided² must be appropriately equipped, maintained and managed³.

1 Constitutional Reform Act 2005 s 51(1).

2 Under ibid s 50: see PARA 601D.3.

3 Ibid s 51(2).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601E. Supreme Court: fees.

601E. Supreme Court: fees.

The Lord Chancellor may, with the agreement of the Treasury, by order prescribe fees payable in respect of anything dealt with by the Supreme Court¹. An order under these provisions may, in particular, contain provision about (1) scales or rates of fees; (2) exemptions from fees; (3) reductions in fees; (4) whole or partial remission of fees². When including any provision in an order under these provisions, the Lord Chancellor must have regard to the principle that access to the courts must not be denied³. Before making an order under these provisions, the Lord Chancellor must consult all of the following (a) the persons listed below⁴; (b) the bodies listed below⁵. The persons referred to in head (a) above are (i) the President of the Supreme Court; (ii) the Lord Chief Justice of England and Wales; (iii) the Master of the Rolls; (iv) the Lord President of the Court of Session; (v) the Lord Chief Justice of Northern Ireland; (vi) the Lord Justice Clerk; (vii) the President of the Queen's Bench Division; (viii) the President of the Family Division; (ix) the Chancellor of the High Court⁶. The bodies referred to in head (b) above are (A) the General Council of the Bar of England and Wales; (B) the Law Society of England and Wales; (c) the Faculty of Advocates of Scotland; (D) the Law Society of Scotland; (E) the General Council of the Bar of Northern Ireland; (F) the Law Society of Northern Ireland⁷.

Supreme Court fees⁸ are recoverable summarily as a civil debt⁹. The Lord Chancellor must take such steps as are reasonably practicable to bring information about Supreme Court fees to the attention of persons likely to have to pay them¹⁰.

1 Constitutional Reform Act 2005 s 52(1). In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1). As to orders under the Constitutional Reform Act 2005 generally see s 144. See the Supreme Court Fees Order 2009, SI 2009/2131.

2 Constitutional Reform Act 2005 s 52(2).

3 Ibid s 52(3).

4 Ie the persons listed in ibid s 52(5).

5 Ie the bodies listed in ibid s 52(6): s 52(4).

6 Ibid s 52(5).

7 Ibid s 52(6).

8 In ibid s 53 'Supreme Court fees' means fees prescribed in an order under s 52: s 53(3).

9 Ibid s 53(1).

10 Ibid s 53(2).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601F. Supreme Court: annual report.

601F. Supreme Court: annual report.

As soon as practicable after each financial year¹, the chief executive of the Supreme Court² must prepare a report about the business of the Supreme Court during that year and give a copy of that report to the following persons (1) the Lord Chancellor; (2) the First Minister in Scotland; (3) the First Minister and the deputy First Minister in Northern Ireland; (4) the First Minister for Wales³.

1 Each of the following is a 'financial year' for the purposes of the Constitutional Reform Act 2005 s 54 (1) the period which begins with the date on which s 54 comes into force (ie 1 October 2009) and ends with the following 31 March; (2) each successive period of 12 months: s 54(3).

2 In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

3 Ibid s 54(1) (amended by SI 2007/1388). The Lord Chancellor must lay a copy of any report of which a copy is given under head (1) in the text before each House of Parliament: 2005 Act s 54(2).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601G. Supreme Court: seal.

601G. Supreme Court: seal.

The Supreme Court¹ is to have an official seal². Every document purporting to be sealed with the official seal of the Supreme Court is to be received in evidence in all parts of the United Kingdom without further proof³.

1 In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

2 Ibid s 55(1).

3 Ibid s 55(2).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601H. Supreme Court: proceedings under jurisdiction transferred to the Supreme Court.

601H. Supreme Court: proceedings under jurisdiction transferred to the Supreme Court.

Transitional provision is made relating to proceedings under jurisdiction which is transferred to the Supreme Court¹ by the Constitutional Reform Act 2005 from the House of Lords or the Judicial Committee of the Privy Council².

¹ In the Constitutional Reform Act 2005 Pt 3 (ss 23-60, Schs 8-11) 'the Supreme Court' means the Supreme Court of the United Kingdom: s 60(1).

² See *ibid* s 57, Sch 10.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(1) CONSTITUTION/601I. Supreme Court: renaming of Supreme Courts of England and Wales and Northern Ireland.

601I. Supreme Court: renaming of Supreme Courts of England and Wales and Northern Ireland.

The Supreme Court of England and Wales is renamed the Senior Courts of England and Wales¹. The Supreme Court of Judicature of Northern Ireland is renamed the Court of Judicature of Northern Ireland². The Northern Ireland Supreme Court Rules Committee is renamed the Northern Ireland Court of Judicature Rules Committee³. Any reference in an enactment⁴, instrument or other document to a court or committee renamed by these provisions is to be read, so far as necessary for continuing its effect, as a reference to the Senior Courts, the Court of Judicature or the Northern Ireland Court of Judicature Rules Committee (as the case may be)⁵. Amendments are made in connection with the renaming⁶.

1 Constitutional Reform Act 2005 s 59(1).

2 Ibid s 59(2).

3 Ibid s 59(3).

4 For the meaning of 'enactment' see ibid s 140.

5 Ibid s 59(4).

6 See ibid s 59(5), Sch 11. Unless otherwise provided, amendments made by an enactment (A) (whether or not in force) to another enactment (B) (1) are not included in references in Sch 11 to enactment A; (2) are included in references in Sch 11 to enactment B: s 59(6).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(i) Constitution and Divisions of the High Court/602. Constitution of the High Court.

(2) THE HIGH COURT

(i) Constitution and Divisions of the High Court

602. Constitution of the High Court.

The High Court consists of the Lord Chancellor¹, the Lord Chief Justice², the President of the Family Division³, the Vice-Chancellor⁴, the Senior Presiding Judge⁵, the vice-president of the Queen's Bench Division⁶, and not more than 106 puisne judges⁷ of that court⁸. It is taken to be duly constituted notwithstanding any vacancy in the office of Lord Chancellor, Lord Chief Justice, President of the Family Division, Vice-Chancellor or Senior Presiding Judge and whether or not an appointment has been made to the office of vice-president of the Queen's Bench Division⁹.

Except where the Supreme Court Act 1981 expressly provides otherwise, all the judges of the High Court have in all respects equal power, authority and jurisdiction¹⁰.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

3 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 As to the Senior Presiding Judge see the Courts and Legal Services Act 1990 s 72(2); and PARA 504 ante.

6 As to the vice-president of the Queen's Bench Division see the Access to Justice Act 1999 s 69(1); and PARA 515 ante.

7 The puisne judges of the High Court are styled 'Justices of the High Court': Supreme Court Act 1981 s 4(2). As to their qualifications and appointment see PARA 515 et seq ante. Her Majesty may by Order in Council from time to time amend s 4(1) (as amended) (see the text and notes 1-6 supra, 8 infra) so as to increase or further increase the maximum number of puisne judges of the High Court: s 4(4). No recommendation may be made to Her Majesty in Council to make such an Order unless a draft of the Order has been laid before Parliament and duly approved by resolution of each House of Parliament: s 4(5). In the exercise of this power, Her Majesty has made the Maximum Number of Judges Order 1999, SI 1999/3138, which came into force on 25 November 1999: see art 1.

8 Supreme Court Act 1981 s 4(1) (s 4(1), (6) amended by the Courts and Legal Services Act 1990 s 72(6); and by the Access to Justice Act 1999 s 69(2); the Supreme Court Act 1981 s 4(1) also amended by the Maximum Number of Judges Order 1999, SI 1999/3138). In respect of any period during which he is a judge of the European Court of Human Rights, a Justice of the High Court does not count as a High Court judge for these purposes: see the Human Rights Act 1998 s 18(4)(a); para 521 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Further, a holder of the office of Justice of the High Court who also holds office in a relevant international court does not count as holding that office for these purposes: see the Access to Justice Act 1999 s 68(3)(c); and PARA 521 ante.

9 Supreme Court Act 1981 s 4(6) (as amended: see note 8 supra).

10 Ibid s 4(3). As to judges nominated to be commercial court judges see PARAS 603, 615 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1536; and as to Technology and Construction Court ('TCC') judges see PARA 616 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1546.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

602 Constitution of the High Court

TEXT AND NOTES--1981 Act s 4 further amended: Constitutional Reform Act 2005 Sch 4 para 117, Sch 18 Pt 2.

TEXT AND NOTE 7--For '106' read '108': 1981 Act s 4(1); Maximum Number of Judges Order 2003, SI 2003/775.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(i) Constitution and Divisions of the High Court/603. Divisions of the High Court.

603. Divisions of the High Court.

The High Court was originally divided into five Divisions, namely, the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce and Admiralty Division¹. Power was, however, given to alter these Divisions by Order in Council², in pursuance of which the Queen's Bench, Common Pleas, and Exchequer Divisions were consolidated into the Queen's Bench Division in 1880³. In 1925 it was provided by statute that the High Court should be divided into three Divisions, namely, the Chancery Division, the Queen's Bench Division, and the Probate, Divorce and Admiralty Division⁴, with power to alter the number of Divisions by Order in Council⁵.

With effect from 1 October 1971 the Divisions were reorganised; the Probate, Divorce and Admiralty Division was renamed the Family Division⁶, to which the High Court's matrimonial and domestic business was assigned⁷, the Admiralty and Commercial Courts being set up as part of the Queen's Bench Division⁸ and contentious probate business being transferred to the Chancery Division⁹, so that the High Court was divided into the Chancery Division, the Queen's Bench Division and the Family Division. These three Divisions are now provided for by the Supreme Court Act 1981¹⁰.

Each Division consists of such of the puisne judges¹¹ as are for the time being attached to it by direction of the Lord Chancellor¹² together with, in the case of:

- 195 (1) the Chancery Division, the Lord Chancellor who is its president and the Vice-Chancellor who is its vice-president¹³;
- 196 (2) the Queen's Bench Division, the Lord Chief Justice who is its president and the vice-president of the Queen's Bench Division¹⁴; and
- 197 (3) the Family Division, the President of the Family Division¹⁵.

In addition to the Admiralty and Commercial Courts¹⁶, there is now an Administrative Court¹⁷ and a Technology and Construction Court¹⁸ as part of the Queen's Bench Division and a Bankruptcy Court¹⁹, a Companies Court²⁰ and a Patents Court²¹ as part of the Chancery Division.

Provision is made under the Supreme Court Act 1981 for the allocation of business between the Divisions²². Without prejudice to such provision, all jurisdiction vested in the High Court belongs to all the Divisions alike²³. The various Divisions and courts constitute one High Court, and an order of any one is the order of the High Court²⁴.

1 Supreme Court of Judicature Act 1873 s 31 (repealed).

2 Ibid s 32 (repealed).

3 Order in Council dated 16 December 1880. An order in Council was also made on 22 May 1883 upon the petition of the Mayor, Commonalty and citizens of the City of London to the effect that all issues and cases at nisi prius triable within the County of the City of London were to be tried at the Royal Courts of Justice: see the

Courts of Justice Building Act 1865 s 20 (repealed); and the Supreme Court of Judicature (Consolidation) Act 1925 s 226(1)(a) (repealed).

4 Ibid s 4(1) (repealed).

5 Ibid s 5(1); Supreme Court of Judicature (Amendment) Act 1944 s 1(5), Schedule; Administration of Justice Act 1970 s 1(5), Sch 2 para 7 (all repealed).

6 Ibid s 1(1), Sch 2 para 6 (repealed).

7 See ibid s 1(2), Sch 1 (repealed).

8 Ibid ss 1(3), 2, 3 (repealed).

9 Ibid s 1(4)(b) (repealed).

10 See the Supreme Court Act 1981 s 5(1) (amended by the Access to Justice Act 1999 s 69(3)); and the text and notes 13-15 *infra*.

11 As to the appointment and qualification of puisne judges see PARA 515 *et seq ante*.

12 See the Supreme Court Act 1981 s 5(2). Any such judge may with his consent be transferred from one Division to another by direction of the Lord Chancellor, but only with the concurrence of the senior judge of the Division from which it is proposed to transfer him: s 5(2). Any judge attached to any Division may act as an additional judge of any other Division at the request of the Lord Chief Justice made with the concurrence of the President of the Family Division or the Vice-Chancellor, or both, as appropriate: s 5(3) (amended by the Courts and Legal Services Act 1990 s 125(2), Sch 17 para 12). Furthermore, nothing in the Supreme Court Act 1981 s 5 (as amended) is to be taken to prevent a judge of any Division, whether nominated under s 6(2) (see the text and note 16 *infra*) or not, from sitting, whenever required, in a Divisional Court of another Division or for any judge of another Division: s 5(4). As to the Lord Chancellor see PARA 501 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*; as to the Lord Chief Justice and the Vice-Chancellor see PARA 515 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303; and as to the President of the Family Division see PARA 515 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

13 Supreme Court Act 1981 s 5(1)(a).

14 Ibid s 5(1)(b) (as amended: see note 10 *supra*). As to the vice-president of the Queen's Bench Division see the Access to Justice Act 1999 s 69(1); and PARA 515 *ante*.

15 Supreme Court Act 1981 s 5(1)(c).

16 The Admiralty Court and the Commercial Court are part of the Queen's Bench Division by virtue of ibid s 6(1)(b). The judges of those courts and of the Patents Court (see the text and note 21 *infra*) are such of the puisne judges of the High Court as the Lord Chancellor may from time to time nominate to be judges of the Patents Court, Admiralty judges and commercial judges respectively: s 6(2). As to the Admiralty Court see PARA 615 *post*; and SHIPPING AND MARITIME LAW; and as to the Commercial Court see PARA 615 *post*; and CIVIL PROCEDURE vol 12 (2009) PARA 1536 *et seq*.

17 As to the Administrative Court see PARA 614 *post*; and ADMINISTRATIVE LAW; CROWN PROCEEDINGS AND CROWN PRACTICE.

18 As to the Technology and Construction Court, which deals with claims formerly known as 'official referee's business', see PARA 616 *post*; and CIVIL PROCEDURE vol 12 (2009) PARA 1546.

19 As to the Bankruptcy Court see generally BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

20 As to the Companies Court see generally COMPANIES.

21 The Patents Court is part of the Chancery Division by virtue of the Supreme Court Act 1981 s 6(1)(a). As to the nomination of judges of the court see s 6(2); and note 16 *supra*. See also PARA 612 *post*; and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 637 *et seq*.

22 See PARA 610 *et seq post*; and CIVIL PROCEDURE vol 11 (2009) PARA 43 *et seq*.

23 Supreme Court Act 1981 s 5(5). Thus the Companies Court and companies judge have an identical jurisdiction to the High Court and High Court judges: *Re Shilena Hosiery Co Ltd* [1980] Ch 219, [1979] 2 All ER 6; *Fabric Sales Ltd v Eratex Ltd (Practice Note)* [1984] 1 WLR 863n, CA.

24 *Re Hastings (No 3)* [1959] Ch 368, [1959] 1 All ER 698; affd [1959] 3 All ER 221, [1959] 1 WLR 807, CA.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

603 Divisions of the High Court

TEXT AND NOTES 10-15--1981 Act s 5 further amended: Constitutional Reform Act 2005 Sch 4 para 118. For the Family Division, see further PARA 603A.

TEXT AND NOTE 13--For 'Vice Chancellor' read 'Chancellor of the High Court': 1981 Act s 5(1)(a) (amended by SI 2005/2506).

NOTE 16--1981 Act s 6(2) amended, s 6(3) added: Constitutional Reform Act 2005 Sch 4 para 119.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(i) Constitution and Divisions of the High Court/603A. The Family Division of the High Court

603A. The Family Division of the High Court

There are three divisions of the High Court, namely the Chancery Division, the Queen's Bench Division and the Family Division, consisting of the President of the Family Division¹ and such of the puisne judges as are for the time being so attached thereto².

The puisne judges of the High Court are to be attached to the various Divisions by direction of the Lord Chancellor; and any such judge may with his consent be transferred from one Division to another by direction of the Lord Chancellor, but is to be so transferred only with the concurrence of the senior judge of the Division from which it is proposed to transfer him³.

Any judge attached to any Division may act as an additional judge of any other Division at the request of the Lord Chief Justice made with the concurrence of the President of the Family Division or the Vice-Chancellor, or both, as appropriate⁴.

Nothing in the above provisions is to be taken to prevent a judge of any Division, whether nominated⁵ or not, from sitting, whenever required, in a divisional court of another Division or for any judge of another Division⁶.

Without prejudice to the provisions of the Senior Courts Act 1981 relating to the distribution of business in the High Court⁷, all jurisdiction vested in the High Court belongs to all the Divisions alike⁸.

Divisional courts may be held for the transaction of any business in the High Court which is required to be heard by a divisional court⁹; and any number of divisional courts may sit at the same time¹⁰. A divisional court must be constituted of not less than two judges¹¹; and every judge of the High Court is qualified to sit in any divisional court¹².

1 As to the President of the Family Division see PARA 515A.

2 Senior Courts Act 1981 s 5(1)(c) (amended by Constitutional Reform Act 2005 Sch 4 para 118). As to Her Majesty's power to alter Divisions or to transfer certain courts to different Divisions see s 7; and PARA 604.

3 Ibid s 5(2), see NOTE 2.

4 Ibid s 5(3) (amended by the Courts and Legal Services Act 1990 s 125(2), Sch 17 para 12; further amended by Constitutional Reform Act 2005 Sch 4 para 118).

5 Ibid under the Senior Courts Act 1981 s 6(2): see PARA 603.

6 Ibid s 5(4), see NOTE 2.

7 See ibid ss 61-65; and PARA 610 et seq.

8 Ibid s 5(5), see NOTE 2.

9 Ibid s 66(1).

10 Ibid s 66(2).

11 Ibid s 66(3).

12 Ibid s 66(4).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(i) Constitution and Divisions of the High Court/604. Power to alter Divisions or transfer certain courts to different Divisions.

604. Power to alter Divisions or transfer certain courts to different Divisions.

On a recommendation of the Lord Chancellor¹, the Lord Chief Justice², the Master of the Rolls³, the President of the Family Division⁴ and the Vice-Chancellor⁵, Her Majesty may from time to time by Order in Council direct that (1) any increase or reduction in the number of Divisions of the High Court; or (2) the transfer of any of the Patents Court, the Admiralty Court or the

Commercial Court⁶ to a different Division, be carried into effect in pursuance of the recommendation⁷.

Such an Order in Council may include such incidental, supplementary or consequential provisions as appear to Her Majesty necessary or expedient⁸. The Order is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

3 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

6 I.e. the transfer of any of the courts mentioned in the Supreme Court Act 1981 s 6(1): see PARA 603 the text and notes 16, 21 ante.

7 Ibid s 7(1), (2). As to the Divisions of the High Court see PARA 603 ante.

8 Ibid s 7(3). The Order may include amendments of provisions referring to particular Divisions contained in the Supreme Court Act 1981 or any other statutory provision: s 7(3).

9 Ibid s 7(4). At the date at which this title states the law, no such Order had been made. As to the reduction in the number of Divisions by Order in Council under earlier legislation see PARA 603 the text and notes 2-3 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

604 Power to alter Divisions or transfer certain courts to different Divisions

TEXT AND NOTE 7--1981 Act s 7(1), (2) amended: Constitutional Reform Act 2005 Sch 4 para 120, Sch 18 Pt 2.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(i) Constitution and Divisions of the High Court/605. Divisional Courts.

605. Divisional Courts.

Divisional Courts may be held for the transaction of any business in the High Court which is required, by or by virtue of rules of court¹ or any other statutory provision, to be heard by a Divisional Court². A Divisional Court must be constituted of not less than two judges³; and any number of Divisional Courts may sit at the same time⁴.

Every judge of the High Court⁵ is qualified to sit in any Divisional Court⁶. The judge who is the senior of the judges⁷ constituting a Divisional Court is the president of the court⁸.

Their jurisdiction is mainly appellate or supervisory and is briefly considered subsequently⁹.

1 As to the Civil Procedure Rules and other rules of court see PARA 575 et seq ante.

2 Supreme Court Act 1981 s 66(1). As to matters assigned to a Divisional Court of the Chancery Division see CIVIL PROCEDURE vol 12 (2009) PARA 1695; and as to matters assigned to a Divisional Court of the Queen's Bench Division see CIVIL PROCEDURE vol 12 (2009) PARA 1697. The Queen's Bench Divisional Court is not a court of first instance, neither is it a court of appeal; it has a unique and multi-purpose function and is, generally speaking, a court of review: *R v Leeds County Court, ex p Morris* [1990] 1 QB 523, [1990] 1 All ER 550, DC (court had power to order unassisted party's costs to be paid out of the Legal Aid Fund under the Legal Aid Act 1988 s 18 (repealed subject to transitional provisions)).

3 Supreme Court Act 1981 s 66(3). In the Chancery Division, Divisional Courts for hearing bankruptcy appeals from county courts consist normally of two judges; in the Queen's Bench Division a Divisional Court is usually composed of three judges, and the Lord Chief Justice frequently presides; and in the Family Division, Divisional Courts consist generally of three judges, the President presiding. A larger Divisional Court may however sit to hear a case of particular importance: see eg *Willcock v Muckle* [1951] 2 KB 844, [1951] 2 All ER 367, DC (seven members, including the Lord Chief Justice and the Master of the Rolls; case stated by justices concerning the continuance of the National Registration Act 1939 (since expired)). In the case of appeals against orders made by the Solicitors Disciplinary Tribunal, the court must consist of not less than three judges unless the Lord Chief Justice otherwise directs: see CPR Sch 1 RSC Ord 106 r 11. Where the two judges of a Divisional Court disagree, the appeal is treated as dismissed: see *Metropolitan Water Board v Johnson & Co* [1913] 3 KB 900 at 904, DC; *Johnson v Rees* (1915) 84 LJB 1276, DC; *Cheater v Cater* [1917] 2 KB 516 (on appeal [1918] 1 KB 247, CA); *Derry v Sanders* (1918) 62 Sol Jo 549 (on appeal [1919] 1 KB 223, CA; and cf *Flannagan v Shaw* [1920] 3 KB 96 at 107-108, CA). The older procedure by which the junior judge withdrew his judgment (see eg *Poulton v Moore* [1915] 1 KB 400, CA) is no longer followed. The Divisional Court is generally bound by its own previous decisions: see *Huddersfield Police Authority v Watson* [1947] KB 842, [1947] 2 All ER 193, DC; and CIVIL PROCEDURE vol 11 (2009) PARA 97. The decision of a Divisional court is not binding on a Scottish court (*Bennett v HM Advocate* 1995 SLT 510) nor, it seems, on the Employment Appeal Tribunal (see CIVIL PROCEDURE vol 11 (2009) PARA 98 note 2).

As to the restrictions on appeal from Divisional Courts see CIVIL PROCEDURE vol 12 (2009) PARAS 1688-1690, 1692.

4 Supreme Court Act 1981 s 66(2).

5 As to the appointment and qualification of High Court judges see PARA 515 et seq ante.

6 Supreme Court Act 1981 s 66(4).

7 ie according to the order of precedence under the Supreme Court Act 1981: see s 13; and PARA 517 ante.

8 Ibid s 66(5).

9 See PARA 609 post.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para

1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

605 Divisional Courts

NOTE 3--CPR Sch 2 RSC Ord 106 revoked: SI 2004/3419. *Metropolitan Water Board and Cheater*, both cited, applied in *Cambridgeshire CC v Associated Lead Mills Ltd* [2005] EWHC 1627 (Admin), [2006] RTR 8.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(ii) Jurisdiction of the High Court/A. IN GENERAL/606. Jurisdiction transferred to the High Court.

(ii) Jurisdiction of the High Court

A. IN GENERAL

606. Jurisdiction transferred to the High Court.

To the High Court of Justice were transferred the jurisdictions possessed by the High Court of Chancery¹ (including its common law jurisdiction), the Court of Queen's Bench², the Court of Common Pleas³ at Westminster, the Court of Exchequer⁴ (including its jurisdiction as a court of revenue), the High Court of Admiralty⁵, the Court of Probate⁶, the Court for Divorce and Matrimonial Causes⁷, the London Court of Bankruptcy⁸, the Court of Common Pleas at Lancaster⁹, the Court of Chancery of the county palatine of Lancaster¹⁰, the Court of Pleas at Durham¹¹, the Court of Chancery of the county palatine of Durham¹², and the courts created by commissions of assize¹³. The latter courts were abolished in 1971¹⁴ and their former criminal jurisdiction is now exercised by the Crown Court¹⁵.

The jurisdiction of the High Court is both original and appellate¹⁶. The effect of the Judicature Acts, and the rules made under them, was not (except as expressed) to alter the jurisdiction of the High Court as transferred to it¹⁷.

On the abolition of the Railway and Canal Commissioners, their jurisdiction was with certain exceptions transferred to the High Court in so far as it extended to England and Wales¹⁸.

1 The old Court of Chancery consisted of two separate tribunals, an ordinary court of common law and a court of equity. Of these the court of common law was the most ancient, and had jurisdiction in personal actions where a minister or officer of the court was concerned, in *scire facias* to cancel patents, or to partition land held in coparcenary, and in other matters. The court of equity is described thus in Jacob *Law Dictionary* 'Chancery': 'Chancery (Cancellaria) was the highest court of judicature in this kingdom, next to the Parliament, and of very ancient institution ... The Extraordinary Court or Court of Equity proceeded by the rules of equity and conscience, and moderated the rigour of the common law, considering the intention rather than the words of the law ... It gave relief for and against infants, notwithstanding their minority, and for and against married women, notwithstanding their coverture ...; all frauds and deceits, for which there was no redress at common law; all breach of trust and confidences; and accidents, as to relieve obligors, mortgagors etc against penalties and forfeitures, where the intent was only to pay the debt, was there remedied ... Also this court gave relief against the extremity of unreasonable engagements, entered into without consideration; obliged creditors that were unreasonable to compound with an unfortunate debtor: and made executors etc give security and pay interest for money that was to lie long in their hands (*Anon* (1679) 2 Vent 346). Here executors might sue one another, or one executor alone be sued without the rest: order might be made for performance of a will: it might be decreed who should have the tuition of a child. This court might confirm title to lands; render conveyances defective through mistake etc good and perfect In Chancery copyholders might be relieved

against the ill-usage of their lords. Inclosures of lands that were common might be decreed: and this court might decree money or lands given to charitable uses; things in action, upon assignment on consideration: oblige men to account with each other: avoid the bar of actions, by the Statute of Limitations, etc ... (*Anon* (1707) 1 Salk 154). But in all cases, where the plaintiff could have his remedy at law, he ought not to be relieved in Chancery: and a thing which might be tried by a jury was not triable in this court'.

2 The jurisdiction of this court was civil and criminal. The civil jurisdiction was on what was called the plea side of the court. At first more limited, it had become extended to all actions between subject and subject, except where the revenue of the Crown was affected, or where the title to realty was in question. On the plea side the court also exercised appellate jurisdiction from the palatinate courts, inferior courts of record, and from the former Inclosure Commissioners. The criminal jurisdiction, on the Crown side, extended to all offences of whatever nature, to articles of the peace, and to habeas corpus, certiorari, mandamus, and quo warranto. The court is described thus in Jacob *Law Dictionary* 'King's Bench': 'King's Bench was the court or judgment seat where the King of England was sometimes wont to sit in his own person; and was therefore movable with the court or King's household, and called Curia Domini Regis or Aula Regis: and by 28 Edw 1 (Articles upon the Charters) (1300) c 5 (repealed), it was provided that this court was to follow the King. King Henry III several times sat in person with the judges in Banco Regis, being seated on a High Bench, and the judges at a lower one at his feet. And the King's Bench was originally the only court in Westminster Hall; out of which the Courts of Common Pleas and Exchequer seem to have been derived This court was the custos morum of all the subjects of the realm; and where it met with any offence contrary to the first principles of common justice, might inflict a suitable punishment'. See also 2 Hawk PC (8th Edn) 6 c 3.

3 The Court of Common Pleas is described thus in Jacob *Law Dictionary* 'Common Pleas': 'Gwyn in the preface of his reading says that till Henry III granted the great Charter, there were but two courts, called the King's Courts, namely the King's Bench and the Exchequer ... and that upon the grant of that charter, the Court of Common Pleas was erected and settled in one certain place, ie Westminster Hall. But Sir Edward Coke is of opinion in his preface to the eighth report that the Court of Common Pleas was constituted before the Conquest, and was not created by Magna Charta, at which time there were justiciarii de Banco, etc ... The jurisdiction of this court was general and extended throughout England. It held pleas of all civil causes at common law between subject and subject in actions real, personal and mixed, and it seems to have been the only court for real causes. In personal and mixed actions it had a concurrent jurisdiction with the King's Bench. But it had no cognisance of Pleas of the Crown; and Common Pleas were all that were not such. It was the court of appeal from revising barristers: Parliamentary Voters Registration Act 1843 s 60 (repealed). It had also jurisdiction under the Fines and Recoveries Act 1833 ss 81, 83 (repealed), the Railway and Canal Traffic Act 1854 ss 3, 4, 5 (repealed); and as to election petitions under the Parliamentary Elections Act 1868 s 5 (repealed)'.

4 This court had exclusive jurisdiction in matters affecting the revenue of the Crown. It is described thus in the *Oxford English Dictionary* 'Exchequer': 'Exchequer (ME Eschequer, a OF Eschequier ... a chessboard) ... The name originally referred to the table covered with a cloth divided into squares, on which the accounts of the revenue were kept by means of counters. ... 3. (more fully Court of Exchequer, Exchequer of Pleas) a court of law, historically representing the Anglo-Norman exchequer in its judicial capacity ... The jurisdiction of the court was theoretically confined to matters of revenue, but in practice was gradually extended to all kinds of cases (except "real actions") by means of the legal fiction that the wrong suffered by the plaintiff had rendered him unable to pay his debts to the king. Up to 1841 it had also an equity side, but this was transferred to the High Court of Chancery by the Court of Chancery Act 1841 s 1 (repealed). The presentation and swearing of the Lord Mayor of the City of London which used to be carried out in the Court of Exchequer now takes place in the Queen's Bench Division of the High Court of Justice each November'.

5 The High Court of Admiralty (constituted a court of record by the Admiralty Court Act 1861 s 14 (repealed)), had at the date of the Supreme Court of Judicature Act 1873 (repealed) lost its criminal jurisdiction except under the Foreign Enlistment Act 1870. Its civil jurisdiction extended to all maritime actions, whether in rem or in personam, and was equitable as well as legal, and appellate as well as original. This court had also jurisdiction as a prize court: Naval Prize Act 1864 ss 3, 4; see further PARA 608 post.

6 The Court of Probate was established as a court of record by the Court of Probate Act 1857 ss 3-23 (repealed), and had jurisdiction to grant and revoke probates and letters of administration and to decide all questions in testamentary matters.

7 This court was established as a court of record by the Matrimonial Causes Act 1857 s 6 (repealed), with exclusive jurisdiction in all causes, suits and matters matrimonial. The Act, however, did more than set up a new court and regulate its procedure. It introduced new substantive law and gave to the court it constituted not only the jurisdiction over matrimonial questions which the old ecclesiastical tribunals possessed, but a new jurisdiction arising out of the principle, then for the first time introduced into the law of England, of a right to divorce for certain matrimonial offences: *Walker v Walker* [1919] AC 947 at 954, PC; *Board v Board* [1919] AC 956 at 961-962, PC.

8 This court was established as a principal court of record by the Bankruptcy Act 1869 ss 61, 65 (repealed). It was a court of equity as well as of law, and the chief judge possessed all the jurisdiction of a judge of one of

the superior courts of common law, and of a judge of the High Court of Chancery, in addition to his special jurisdiction in bankruptcy: s 65 (repealed).

9 The Court of Common Pleas at Lancaster had within the county palatine a concurrent jurisdiction with the courts of common law in personal actions and in ejectment.

10 This court, known as the Lancaster Palatine Court, was regulated latterly by the Court of Chancery of Lancaster Acts 1850 to 1961 (repealed). Within defined geographical limits, the court exercised a jurisdiction co-ordinate with that of the High Court in Chancery matters. It was a superior court from which appeal lay to the Court of Appeal. It was merged with the High Court by the Courts Act 1971 s 41(1) (a), (2), Sch 5 Pt I.

11 This court had similar jurisdiction within the county palatine of Durham as the Court of Common Pleas at Lancaster had in Lancaster.

12 This court, known as the Durham Palatine Court, was regulated latterly by the Durham (County Palatine) Act 1836 (repealed) and the Palatine Court of Durham Act 1889 (repealed). Its status was similar to that of the Lancaster Palatine Court: see note 10 *supra*. It was merged with the High Court by the Courts Act 1971 s 41(1) (b), (2), Sch 5 Pt I.

13 Supreme Court of Judicature (Consolidation) Act 1925 s 18(2) (repealed).

14 Courts created by commissions of assize, which continued to be issued under the Supreme Court of Judicature (Consolidation) Act 1925 s 70 (repealed), were abolished by the Courts Act 1971 s 1(2) (repealed).

15 See PARA 621 *post*.

16 See PARAS 608-609 *post*.

17 *British South Africa Co v Companhia de Moçambique* [1893] AC 602, HL.

18 Railway and Canal Commission (Abolition) Act 1949 ss 1, 3 (now as amended).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

606 Jurisdiction transferred to the High Court

NOTES 10, 12--1971 Act s 41, Sch 5 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(ii) Jurisdiction of the High Court/A. IN GENERAL/607. General jurisdiction of the High Court.

607. General jurisdiction of the High Court.

There is exercisable by the High Court all such jurisdiction¹, whether civil or criminal², as is conferred on it by the Supreme Court Act 1981 or any other Act³ and all such other jurisdiction,

whether civil or criminal, as was exercisable by it immediately before 1 January 1982⁴, including jurisdiction conferred on a judge of the High Court by any statutory provision⁵. This general provision is subject to the specific provisions of the Supreme Court Act 1981⁶.

Any jurisdiction of the High Court is to be exercised only by a single judge of that court⁷ except in so far as it is required, by or by virtue of rules of court⁸ or any other statutory provision, to be exercised by a Divisional Court⁹ or is made exercisable, by rules of court, by a master¹⁰, district judge¹¹ or other officer of the court, or by any other person¹².

Where the Civil Procedure Rules provide for the court to perform any act then, except where an enactment, rule or practice direction provides otherwise, that act may be performed in relation to proceedings in the High Court by any judge, master or district judge of that court¹³. Where those rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer¹⁴.

1 'Jurisdiction' includes powers: Supreme Court Act 1981 s 151(1).

2 As to the distinction between civil and criminal jurisdiction see PARA 310 ante.

3 Ie including an Act passed after the Supreme Court Act 1981: see s 151(1).

4 Ie the commencement date of the Supreme Court Act 1981: see s 153(2).

5 Ibid s 19(2). 'Statutory provision' means any enactment, whenever passed, or any provision contained in subordinate legislation as defined in the Interpretation Act 1978 s 21(1), whenever made: Supreme Court Act 1981 s 151(1).

6 Ibid s 19(2). See further PARA 608 et seq post. The specific mention elsewhere in the Supreme Court Act 1981 of any jurisdiction covered by s 19(2) does not derogate from the generality of that subsection: s 19(4).

7 As to the appointment and qualification of High Court judges see PARA 515 et seq ante.

8 As to rules of court see PARA 575 et seq ante.

9 Except where the context otherwise requires, in the Supreme Court Act 1981 and any other Act, 'Divisional Court', with or without capital letters, means a Divisional Court constituted under the Supreme Court Act 1981 s 66 (see PARA 605 ante): s 151(4). As to the jurisdiction of Divisional Courts see CIVIL PROCEDURE vol 12 (2009) PARAS 1695, 1697.

10 As to High Court masters see PARA 647 et seq post.

11 As to district judges in the High Court see PARAS 661-662 post.

12 Supreme Court Act 1981 s 19(3). As to the allocation of proceedings to different levels of the judiciary see CIVIL PROCEDURE vol 11 (2009) PARA 50.

13 See CPR 2.4(a); and CIVIL PROCEDURE vol 11 (2009) PARA 49.

14 See CPR 2.5(1); and CIVIL PROCEDURE vol 11 (2009) PARA 49. 'Court officer' means a member of the court staff: CPR 2.3(1).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para

1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(ii) Jurisdiction of the High Court/B. ORIGINAL JURISDICTION/608. Original High Court jurisdiction.

B. ORIGINAL JURISDICTION

608. Original High Court jurisdiction.

The original jurisdiction of the High Court is general and extends to all causes of action¹. However, under the High Court and County Courts Jurisdiction Order 1991 proceedings (whether for damages or for a specified sum) may not be started in the High Court unless the value of the claim is more than £15,000² and proceedings which include a claim for damages in respect of personal injuries must not be started in the High Court unless the value of the claim is £50,000 or more³.

The following jurisdiction is reserved to the High Court:

- 198 (1) Admiralty jurisdiction⁴;
- 199 (2) jurisdiction to grant writs of habeas corpus⁵ and applications for judicial review⁶;
- 200 (3) jurisdiction to hear claims for damages in respect of a judicial act under the Human Rights Act 1998⁷;
- 201 (4) wardship jurisdiction⁸;
- 202 (5) jurisdiction to restrain vexatious litigation⁹.

Additionally, claims for damages or other remedies for libel or slander and claims in which the title to any toll, fair, market or franchise is in question are heard in the High Court unless the parties agree in writing that a county court may hear them¹⁰.

The High Court is a prize court and has all such jurisdiction as is conferred on it by the Prize Acts 1864 to 1944¹¹ and all other such jurisdiction on the high seas and elsewhere as it had as a prize court immediately before 1 January 1982¹². In relation to probates and letters of administration, the court has all such jurisdiction as it had immediately before that date, and in particular all such contentious and non-contentious jurisdiction as it then had in relation to testamentary causes and matters, the grant, amendment or revocation of probates and letters of administration and the real and personal estates of deceased persons¹³. The High Court also has all such jurisdiction in relation to matrimonial causes and matters as was immediately before 28 August 1857¹⁴ vested in or exercisable by any ecclesiastical court or person in England or Wales in respect of judicial separation¹⁵, nullity of marriage and any matrimonial cause or matter except marriage licences¹⁶.

The High Court also has jurisdiction to make mandatory orders, prohibiting orders or quashing orders¹⁷ in those classes of cases in which it had power to do so immediately before 1 January 1982¹⁸. Where a person not entitled to do so acts in any substantive office of a public nature and permanent character which is held under the Crown or which has been created by any statutory provision¹⁹ or royal charter, the High Court may grant an injunction restraining him from so acting and, if the case so requires, declare the office to be vacant²⁰.

Provision is made empowering the High Court to make orders for interim payment²¹, orders for provisional damages in respect of personal injuries²², orders for pre-action disclosure²³ and for the preservation of evidence or property before the commencement of proceedings²⁴ and orders for disclosure and preservation of evidence or property against third parties²⁵. The High Court also has powers to award interest on debts and damages²⁶ and to grant an injunction or appoint a receiver whether by interim or final order²⁷. The court may grant relief against the forfeiture of a lease in a summary manner²⁸ and may order the execution of certain documents²⁹. It has power to attach debts for the purpose of satisfying judgments or orders for the payment of money³⁰ and to compel the attendance of witnesses who may be outside the jurisdiction but within the United Kingdom³¹.

In any cause or matter proceeding in the High Court in connection with any contract incorporating an arbitration agreement which confers specific powers upon the arbitrator, the High Court may exercise any such powers, if all parties to the agreement agree³².

The jurisdiction of the High Court has been extended by numerous statutes conferring jurisdiction, either exclusively or concurrently with other courts, in relation to particular subjects. The assignment of the exercise of this statutory jurisdiction to particular Divisions of the High Court is discussed elsewhere in this work³³.

The court has jurisdiction to relieve any member of a corporation who is unjustly disenfranchised³⁴.

The trial of parliamentary election petitions is conducted before an election court composed of two judges of the Queen's Bench Division selected from a rota appointed annually³⁵.

The jurisdiction of the High Court does not include certain excepted mental health matters³⁶. The court's jurisdiction to deal with a particular cause or matter may be ousted by statute³⁷. In certain circumstances the existence of jurisdiction in the High Court may depend on whether in giving a particular certificate or decision reasons have been stated³⁸.

1 As to causes of action see CIVIL PROCEDURE vol 11 (2009) PARA 21.

2 See the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 4A (added by SI 1999/1014); para 579 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 116.

3 See the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 5 (amended by SI 1999/1014); para 579 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 116.

4 County courts no longer have Admiralty jurisdiction: see PARA 707 the text and note 16 post. As to the Admiralty jurisdiction of the High Court see the Supreme Court Act 1981 ss 20-24; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 79 et seq.

5 Ie except in respect of applications made by a parent or guardian of a minor for a writ of habeas corpus concerning the custody of a minor: see *Practice Direction--How to Start Proceedings--The Claim Form* PD 7A para 2.6; and CIVIL PROCEDURE vol 11 (2009) PARA 116. As to habeas corpus see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq.

6 See *Practice Direction--How to Start Proceedings--The Claim Form* PD 7A para 2.6; and CIVIL PROCEDURE vol 11 (2009) PARA 116. As to judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq. See also the Supreme Court Act 1981 s 29 (as amended) (orders of mandamus, prohibition and certiorari (now known as mandatory orders, prohibiting orders and quashing orders: see CPR 51.1(2); and JUDICIAL REVIEW vol 61 (2010) PARA 602)); and the text and notes 17-18 infra. No order may be made under the Courts and Legal Services Act 1990 s 1 (allocation of business between High Court and county courts: see PARA 579 ante) so as to confer jurisdiction on any county court to hear any application for judicial review: s 1(10).

7 See CPR 7.11(1); and CIVIL PROCEDURE vol 11 (2009) PARA 116. As to such claims see the Human Rights Act 1998 s 9; and PARA 316 ante.

8 See the Supreme Court Act 1981 s 41 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 218 et seq.

9 See *ibid* s 42 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 258.

10 See *Practice Direction--How to Start Proceedings--The Claim Form* PD 7A para 2.9; and CIVIL PROCEDURE vol 11 (2009) PARA 116. As to the appropriate forum in which to commence proceedings see generally CIVIL PROCEDURE vol 11 (2009) PARA 116 et seq.

11 See PRIZE vol 36(2) (Reissue) PARA 837.

12 Supreme Court Act 1981 s 27. 1 January 1982 is the commencement date of the Supreme Court Act 1981: see s 153(2).

13 Ibid s 25(1). Subject to the provisions of Pt V (ss 105-128), the High Court must, in the exercise of its probate jurisdiction, perform all such duties with respect to the estates of deceased persons as fell to be performed by it immediately before 1 January 1982: s 25(2). See further EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 73.

14 Ie the commencement date of the Matrimonial Causes Act 1857 (repealed).

15 Judicial separation was previously known as 'divorce a mensa et thoro': see the Supreme Court Act 1981 s 26(a).

16 Ibid s 26 (amended by the Family Law Act 1986 s 68(1), (2), Sch 1 para 25, Sch 2). See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

17 Application for such orders must be made by means of an application for judicial review: see the Supreme Court Act 1981 s 31; and JUDICIAL REVIEW vol 61 (2010) PARA 602 et seq.

18 Ibid s 29(1); and see note 6 supra. Every such order is final, subject to any right of appeal therefrom: s 29(2).

19 For the meaning of 'statutory provision' see PARA 607 note 5 ante.

20 Supreme Court Act 1981 s 30(1), (2).

21 See *ibid* s 32; and CIVIL PROCEDURE vol 11 (2009) PARA 324.

22 See *ibid* s 32A (added by the Administration of Justice Act 1982 s 6(1)); and DAMAGES vol 12(1) (Reissue) PARA 930.

23 See the Supreme Court Act 1981 s 33(2) (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 111.

24 See *ibid* s 33(1); and CIVIL PROCEDURE vol 11 (2009) PARA 114.

25 See *ibid* s 34 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARAS 317, 550.

26 See *ibid* s 35A (added by the Administration of Justice Act 1982 s 15(1), Sch 1 Pt I); and DAMAGES vol 12(1) (Reissue) PARA 848.

27 See the Supreme Court Act 1981 s 37; and CIVIL PROCEDURE vol 11 (2009) PARA 347; RECEIVERS vol 39(2) (Reissue) PARA 313.

28 See *ibid* s 38; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 628.

29 See *ibid* s 39; and CIVIL PROCEDURE vol 12 (2009) PARA 1137.

30 See *ibid* s 40 (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1412.

31 See *ibid* s 36 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 1008.

32 Ibid s 43A (added by the Courts and Legal Services Act 1990 s 100). See further ARBITRATION.

33 See CIVIL PROCEDURE vol 12 (2009) PARA 1693 et seq.

34 4 Co Inst 71; *Bagg's Case* (1615) 11 Co Rep 93b (freeman of borough). As to the rights of freemen see LOCAL GOVERNMENT vol 69 (2009) PARAS 110, 111.

35 See the Representation of the People Act 1983 s 123(1); and ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 767.

36 See PARA 619 post; the Mental Health Act 1983 Part VII (ss 93-113) (as amended); and MENTAL HEALTH vol 30(2) (Reissue) PARA 674 et seq.

37 See PARA 319 ante.

38 See eg *Dean v Prince* [1953] Ch 590, [1953] 2 All ER 636 (auditors' certificate; basis of valuation stated and accordingly court could examine the reasons); on appeal [1954] Ch 409, [1954] 1 All ER 749, CA (applied in *Frank H Wright (Constructions) Ltd v Frodoor Ltd* [1967] 1 All ER 433, [1967] 1 WLR 506); and *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1951] 1 KB 711 at 718 et seq, [1951] 1 All ER 268 at 275 et seq per Goddard CJ; affd [1952] 1 KB 338, [1952] 1 All ER 122, CA (distinguished in *Healey v Minister of Health* [1955] 1 QB 221, [1954] 3 All ER 449, CA); and as regards speaking orders see PARA 320 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

608 Original High Court jurisdiction

TEXT AND NOTES--The High Court has jurisdiction to make orders and to give directions designed to ascertain whether an adult ordinarily resident in England who is currently abroad has been able to exercise her free will in decisions concerning her civil status and her country of residence: *Re SK (an adult) (forced marriage: appropriate relief)* [2004] EWHC 3202 (Fam), [2005] 3 All ER 421 (young adult suspected of being held abroad against her will and attempts being made to force her to marry).

TEXT AND NOTE 2--Proceedings may now not be started in the High Court unless the value of the claim is more than £25,000: SI 1991/724 art 4A (substituted by SI 2009/577).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(ii) Jurisdiction of the High Court/C. APPELLATE AND SUPERVISORY JURISDICTION/609. Exercise of jurisdiction.

C. APPELLATE AND SUPERVISORY JURISDICTION

609. Exercise of jurisdiction.

The appellate and supervisory jurisdiction of the High Court is exercised in some cases by Divisional Courts consisting of two, or sometimes three, judges sitting either in the Queen's Bench Division, the Chancery Division, or the Family Division¹ and in others by a single judge. The jurisdiction is mainly statutory² and is discussed in detail elsewhere in this work³.

Rules of court⁴ may provide that any right of appeal⁵ to the High Court (excluding a right of appeal in a criminal cause or matter)⁶ may be exercised only with permission⁷. No appeal may be made against a decision of the court to give or refuse permission (but this does not affect

any right under rules of court to make a further application for permission to the same or another court)⁸.

The Lord Chancellor⁹ may by order provide that appeals (excluding appeals in a criminal cause or matter) which would otherwise lie to a county court, the High Court, or the Court of Appeal, lie instead to another of those courts, as specified in the order¹⁰. The Access to Justice Act 1999 (Destination of Appeals) Order 2000, which was made in the exercise of this power, provides that many civil appeals which formerly lay to the Court of Appeal now lie to the High Court and that certain county court appeals which formerly lay to the High Court now lie to a judge of the county court. Appeal from a final decision in certain county court proceedings lies to the Court of Appeal¹¹.

In the exercise of its supervisory jurisdiction, the High Court has power to vary a sentence of a magistrates' court or the Crown Court, or any order of such court made on, but not forming part of, the conviction of an offender¹². It also has power to vary a committal in default¹³.

1 As to the constitution of Divisional Courts see PARA 605 ante.

2 Statutory appeals are governed by CPR Pt 52 and the practice direction supplementing that part: see CIVIL PROCEDURE vol 12 (2009) PARA 1684.

3 As to specific appeals to the High Court see CIVIL PROCEDURE vol 12 (2009) PARAS 1686, 1693 et seq. As to appeals by way of case stated see CIVIL PROCEDURE vol 12 (2009) PARAS 1688-1691. As to appeals in bankruptcy proceedings see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; and as to appeals in family proceedings see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 304; MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

4 As to rules of court see PARA 575 et seq ante.

5 For these purposes, a right to make an application to have a case stated for the opinion of the High Court constitutes a right of appeal: Access to Justice Act 1999 s 54(5).

6 As to the distinction between civil and criminal proceedings see PARA 310 ante.

7 See the Access to Justice Act 1999 s 54(1)(b), (2); and CIVIL PROCEDURE vol 12 (2009) PARA 1659. As to permission to appeal see CIVIL PROCEDURE vol 12 (2009) PARAS 1660, 1661.

8 See the Access to Justice Act 1999 s 54(4); and CIVIL PROCEDURE vol 12 (2009) PARA 1659. As to further applications see CPR 52.3(3); and CIVIL PROCEDURE vol 12 (2009) PARA 1660.

9 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

10 See the Access to Justice Act 1999 s 56; and CIVIL PROCEDURE vol 12 (2009) PARA 1658.

11 See the Access to Justice Act 1999 (Destination of Appeals) Order 2000, SI 2000/1071; and CIVIL PROCEDURE vol 12 (2009) PARA 1658.

12 See the Supreme Court Act 1981 s 43; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2018; MAGISTRATES.

13 See *ibid* s 43ZA (added by the Access to Justice Act 1999 s 62); and MAGISTRATES.

UPDATE

601-671 The [Senior Courts] of England and Wales

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1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

609 Exercise of jurisdiction

NOTE 8--See *R (on the application of Sivasubramaniam) v Wandsworth County Court; R (on the application of Sivasubramaniam) v Kingston upon Thames County Court* [2002] EWCA Civ 1738, [2003] 1 WLR 475.

NOTE 12--1981 Act s 43 amended: Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/610. Distribution of business between Divisions.

(iii) Distribution of Business

610. Distribution of business between Divisions.

The distribution of business between the High Court and county courts has already been discussed¹. Within the High Court, business is distributed among the Divisions and groups of judges as directed by rules of court² and statutory provisions³, but the Lord Chancellor⁴ has power, by order made with the concurrence of the senior judges⁵ of the Divisions concerned, to redistribute business among the Divisions⁶. Business may be assigned so that it is exercisable by two or more Divisions concurrently⁷.

Provision is made for the transfer of proceedings between the Divisions of the High Court⁸ and between the High Court and a county court⁹. Without prejudice to the power of transfer, the person by whom proceedings are commenced must allocate them to whichever Division he thinks fit¹⁰.

1 See PARA 579 ante.

2 See the Supreme Court Act 1981 s 61(2). As to rules of court generally see PARA 575 et seq ante; and as to rules of court assigning classes of business to the various Divisions see CIVIL PROCEDURE vol 11 (2009) PARA 43 note 7; CIVIL PROCEDURE vol 12 (2009) PARAS 1686, 1694 et seq.

3 See the Supreme Court Act 1981 s 61(1), Sch 1 (as amended); and PARAS 611, 613, 617 post. See also ss 20-24 (as amended), s 62(2) (Admiralty jurisdiction); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 85 et seq. As to prize jurisdiction see s 27; and PRIZE vol 36(2) (Reissue) PARA 837. As to probate and matrimonial jurisdiction see ss 25, 26 (as amended); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 73; MATRIMONIAL AND CIVIL PARTNERSHIP LAW. As to the business of the Patents Court see s 62(1); and PARA 612 post; and as to the business of the Commercial Court see s 62(3); and PARA 615 post.

4 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 'Senior judge', where the reference is to a senior judge of a Division, means in the case of the Chancery Division, the Vice-Chancellor, and in any other case, the president of the Division in question: Supreme Court Act 1981 s 151(1). As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

6 See *ibid* s 61(3), (5); and CIVIL PROCEDURE vol 11 (2009) PARA 43. For examples of such orders see the High Court (Distribution of Business) Order 1991, SI 1991/1210 (assigning certain proceedings to the Family

Division); the High Court (Distribution of Business) Order 1993, SI 1993/622 (assigning proceedings under the Child Support Act 1991 to the Family Division).

7 See the Supreme Court Act 1981 s 61(4); and CIVIL PROCEDURE vol 11 (2009) PARA 43.

8 See *ibid* s 65; CPR 30.5(1)-(3); and CIVIL PROCEDURE vol 11 (2009) PARA 67.

9 See the County Courts Act 1984 ss 40-42 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 69.

10 See the Supreme Court Act 1981 s 64; and CIVIL PROCEDURE vol 11 (2009) PARA 48.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

610 Distribution of business between Divisions

NOTE 5--Now 'senior judge', where the reference is to the senior judge of a Division, means the president of that Division: Supreme Court Act 1981 s 151(1) (now Senior Courts Act 1981 s 151(1)) (definition substituted by Constitutional Reform Act 2005 Sch 4 para 146).

NOTE 6--1981 Act s 61(3) amended, s 61(9) added: 2005 Act Sch 4 para 129.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/611. Chancery Division.

611. Chancery Division.

To the Chancery Division are assigned by the Supreme Court Act 1981 all causes and matters¹ relating to:

- 203 (1) the sale², exchange or partition of land³, or the raising of charges on land⁴;
- 204 (2) the redemption or foreclosure of mortgages⁵;
- 205 (3) the execution of trusts⁶;
- 206 (4) the administration of the estates of deceased persons⁷;
- 207 (5) bankruptcy⁸;
- 208 (6) the dissolution of partnerships or the taking of partnership or other accounts⁹;
- 209 (7) the rectification, setting aside or cancellation of deeds or other instruments in writing¹⁰;
- 210 (8) probate business¹¹, other than non-contentious or common form business¹²;
- 211 (9) patents¹³, trade marks, registered designs,¹⁴ copyright¹⁵ or design right¹⁶;
- 212 (10) the appointment of a guardian of a minor's estate¹⁷.

Also assigned to the Chancery Division are all causes and matters involving the exercise of the jurisdiction of the High Court under the enactments relating to companies¹⁸.

The assignment of statutory appeals and other miscellaneous appeals and applications to the Chancery Division under the Civil Procedure Rules is discussed elsewhere in this work¹⁹.

1 For the purposes of the Supreme Court Act 1981, 'cause' means any action or any criminal proceedings and 'matter' means any proceedings in court not a cause: see s 151(1). However, the new civil procedure (see CIVIL PROCEDURE vol 11 (2009) PARA 24 et seq) no longer employs this terminology: see CIVIL PROCEDURE vol 11 (2009) PARA 18. The causes and matters here assigned by the Supreme Court Act 1981 s 61(1), Sch 1 para 1 (as amended: see note 16 infra) are by no means coincident or coextensive with the former equity jurisdiction, but are much less: see *Rogers v Jones* (1877) 7 ChD 345 at 349, CA, per Jessell MR. Moreover, subject to the power of transfer under the Supreme Court Act 1981 s 65 and rules of court (see CPR 30.5; and CIVIL PROCEDURE vol 11 (2009) PARA 67), any common law action (now known as a 'claim') may be brought in the Chancery Division: see *Warner v Murdoch, Murdoch v Warner* (1877) 4 ChD 750 at 752, CA, per James LJ (a jury trial cannot be held in the Chancery Division). See also *Stafford Winfield Cook & Partners Ltd v Winfield* [1980] 3 All ER 759, [1981] 1 WLR 458.

2 As to the sale of land see SALE OF LAND.

3 As to the partition or exchange of land see REAL PROPERTY vol 39(2) (Reissue) PARAS 198 et seq, 240 et seq.

4 Supreme Court Act 1981 Sch 1 para 1(a). As to charges on land see LAND CHARGES vol 26 (2004 Reissue) PARA 622 et seq.

5 Ibid Sch 1 para 1(b). As to redemption and foreclosure see MORTGAGE vol 77 (2010) PARA 584 et seq.

6 Ibid Sch 1 para 1(c): see TRUSTS vol 48 (2007 Reissue) PARA 632.

7 Ibid Sch 1 para 1(d): see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 705 et seq.

8 Ibid Sch 1 para 1(e): see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

9 Ibid Sch 1 para 1(f). As to dissolution see PARTNERSHIP vol 79 (2008) PARA 174 et seq; and as to accounts see PARTNERSHIP vol 79 (2008) PARAS 135, 150 et seq.

10 Ibid Sch 1 para 1(g): see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 67 et seq.

11 As to contentious probate business see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 269 et seq.

12 Supreme Court Act 1981 Sch 1 para 1(h). As to non-contentious probate business see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 81 et seq. As to the distinction between contentious and non-contentious probate business see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 80.

13 As to patents see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 301 et seq.

14 As to trade marks see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 1 et seq; and as to registered designs see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 681 et seq.

15 As to copyright see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 54 et seq. See also *Apac Rowena Ltd v Norpol Packaging Ltd* [1991] 4 All ER 516 (writ (now known as a claim form) issued out of Queen's Bench Division).

16 Supreme Court Act 1981 Sch 1(i) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 28(1), (3)). As to design right see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 501 et seq.

17 Supreme Court Act 1981 Sch 1 para 1(j); and see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 147. This must be distinguished from jurisdiction in guardianship generally, which belongs to the Family Division: see Sch 1 para 3(b)(ii) (as substituted); and PARA 617 post.

18 Ibid Sch 1 para 1: and see generally COMPANIES. See also *Re Shilena Hosiery Co Ltd* [1980] Ch 219, [1979] 2 All ER 6; *Fabric Sales Ltd v Eratex Ltd (Practice Note)* [1984] 1 WLR 863n, CA (Companies Court not separate court with own jurisdiction).

19 See CIVIL PROCEDURE vol 12 (2009) PARAS 1686, 1694, 1695.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

611 Chancery Division

NOTE 18--The High Court has inherent power, supplemental to its other powers, to secure compliance with its orders; this includes the power to issue, when necessary, a bench warrant for the arrest of an individual to whom an earlier order had been addressed and with which there appears to be no compliance: *Zakharov v White* [2003] EWHC 2463 (Ch), [2003] All ER (D) 453 (Oct).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/612. Patents Court.

612. Patents Court.

There is constituted as part of the Chancery Division a Patents Court to take such proceedings relating to patents as are within the jurisdiction conferred on it by the Patents Act 1977¹ and such other proceedings relating to patents as may be prescribed².

The judges of the Patents Court are such of the puisne judges of the High Court³ as the Lord Chancellor⁴ may from time to time nominate to be judges of that court⁵.

1 See PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 637 et seq.

2 Supreme Court Act 1981 ss 6(1)(a), 62(1). See further CIVIL PROCEDURE vol 11 (2009) PARA 116 note 16.

3 As to the appointment and qualification of puisne judges see PARA 515 et seq ante.

4 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Supreme Court Act 1981 s 6(2).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

612 Patents Court

TEXT AND NOTE 5--1981 Act s 6(2) amended, s 6(3) added: Constitutional Reform Act 2005 Sch 4 para 119.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/613. Queen's Bench Division.

613. Queen's Bench Division.

To the Queen's Bench Division are assigned by the Supreme Court Act 1981¹:

- 213 (1) applications for writs of habeas corpus², except applications made by a parent or guardian of a minor for such a writ concerning the custody of the minor³;
- 214 (2) applications for judicial review⁴;
- 215 (3) all causes and matters involving the exercise of the Admiralty jurisdiction of the High Court⁵ or its jurisdiction as a prize court⁶; and
- 216 (4) all causes and matters entered in the commercial list⁷.

The assignment of statutory appeals and other miscellaneous appeals and applications to the Queen's Bench Division under the Civil Procedure Rules is discussed elsewhere in this work⁸.

1 The list in the Supreme Court Act 1981 s 61(1), Sch 1 para 2 is far from being exhaustive, and does not accurately reflect the actual business conducted in the Queen's Bench Division, which is the lineal successor of the original superior courts of common law, namely the Court of Queen's Bench, the Court of Common Pleas at Westminster and the Court of Exchequer, both as a Court of Revenue and as a common law court: see the Supreme Court of Judicature (Consolidation) Act 1925 s 18(2) (repealed); and PARA 603 ante. It thus exercises the entire range of common law jurisdiction, embracing all the branches of the common law except that which was exercised by the High Court of Chancery.

2 As to habeas corpus see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq.

3 Supreme Court Act 1981 Sch 1 para 2(a): see CPR Sch 1 RSC Ord 54 r 11. Such an application is made in the Family Division.

4 Supreme Court Act 1981 Sch 1 para 2(b): see CPR Pt 54; and JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

5 See CPR Pt 61; *Practice Direction--Admiralty Claims* PD 61; and SHIPPING AND MARITIME LAW. For the meaning of 'cause' and 'matter' see PARA 611 note 1 ante; but note that the new civil procedure (see CIVIL PROCEDURE vol 11 (2009) PARA 24 et seq) no longer employs this terminology: see CIVIL PROCEDURE vol 11 (2009) PARA 18.

6 Supreme Court Act 1981 Sch 1 para 2(c). As to prize jurisdiction see PRIZE vol 36(2) (Reissue) PARA 847.

7 Ibid Sch 1 para 2(d); and see CPR Pt 58; *Practice Direction--Commercial Court* PD 58; and CIVIL PROCEDURE vol 12 (2009) PARA 1536 et seq.

8 See CIVIL PROCEDURE vol 12 (2009) PARAS 1686, 1696-1699.

UPDATE**601-671 The [Senior Courts] of England and Wales**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

613 Queen's Bench Division

TEXT AND NOTES 2-7--Also, head (5) all control order proceedings within the meaning of the Prevention of Terrorism Act 2005 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 506 et seq): 1981 Act Sch 1 para 2(ba) (added by the 2005 Act s 11(5), Schedule para 10).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/614. Administrative Court.

614. Administrative Court.

Following a review of the Crown Office List undertaken by Sir Jeffrey Bowman, the Crown Office side of the Queen's Bench Division¹ was renamed the Administrative Court in 2000. The Administrative Court exercises all the powers which were previously exercised in relation to cases in the Crown Office List².

There are currently 25 judges nominated by the Lord Chief Justice³ to sit in the Administrative Court. They include two judges of the Chancery Division⁴ and two of the Family Division⁵ who act as additional judges of the Queen's Bench Division when dealing with Administrative Court cases. Routinely there are approximately eight judges allocated to single judge sittings and one or two Divisional Courts sit⁶.

The Administrative Court office is located at the Royal Courts of Justice⁷.

The business of, and procedure in, the Administrative Court, which is mainly concerned with judicial review, statutory appeals and applications, habeas corpus and extradition, is discussed in detail elsewhere in this work⁸.

1 As to the Queen's Bench Division see PARA 613 ante.

2 See *Practice Note* [2000] 4 All ER 1071, sub nom *Practice Direction (Administrative Court: establishment)* [2000] 1 WLR 1654.

3 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 As to the Chancery Division see PARA 611 ante.

5 As to the Family Division see PARA 617 post.

6 See *Practice Statement (Administrative Court: annual statement)* [2002] 1 All ER 633 para 1.

7 As to the Royal Courts of Justice see PARA 601 ante; and as to court offices located there see also PARA 641 post.

8 See ADMINISTRATIVE LAW; CROWN PROCEEDINGS AND CROWN PRACTICE. See also CIVIL PROCEDURE; JUDICIAL REVIEW.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/615. Admiralty Court and Commercial Court.

615. Admiralty Court and Commercial Court.

There is constituted as part of the Queen's Bench Division an Admiralty Court to take Admiralty business, that is to say causes and matters¹ assigned to the Queen's Bench Division² and involving any exercise of the High Court's Admiralty jurisdiction or its jurisdiction as a prize court³. The judges of the Admiralty Court are such of the puisne judges of the High Court⁴ as the Lord Chancellor⁵ may from time to time nominate to be judges of that court⁶.

There is also constituted as part of the Queen's Bench Division a Commercial Court to take such causes and matters as may in accordance with rules of court⁷ be entered in the commercial list⁸. The judges of the Commercial Court are such of the puisne judges of the High Court as the Lord Chancellor may from time to time nominate to be Commercial Judges⁹.

The Admiralty and Commercial Registry is located at the Royal Courts of Justice¹⁰.

1 For the meaning of 'cause' and 'matter' see PARA 611 note 1 ante; but note that the new civil procedure (see CIVIL PROCEDURE vol 11 (2009) PARA 24 et seq) no longer employs this terminology: see CIVIL PROCEDURE vol 11 (2009) PARA 18.

2 As to the business assigned to the Queen's Bench Division see PARA 613 ante.

3 Supreme Court Act 1981 ss 6(1)(b), 62(2). See further SHIPPING AND MARITIME LAW vol 93 (2008) PARA 85; PRIZE.

4 As to the appointment and qualification of puisne judges see PARA 515 et seq ante.

5 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Supreme Court Act 1981 s 6(2).

7 As to rules of court generally see PARA 575 et seq ante.

8 Supreme Court Act 1981 ss 6(1)(b), 62(3). See further CIVIL PROCEDURE vol 12 (2009) PARA 1536 et seq.

9 Supreme Court Act 1981 s 6(2).

10 As to the Royal Courts of Justice see PARA 601 ante; and as to court offices located there see also PARA 641 post.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

615 Admiralty Court and Commercial Court

TEXT AND NOTES 6, 9--1981 Act s 6(2) amended, s 6(3) added: Constitutional Reform Act 2005 Sch 4 para 119.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/616. Technology and Construction Court.

616. Technology and Construction Court.

There is now constituted a Technology and Construction Court to take Technology and Construction Court ('TCC') business (formerly known as 'official referees' business')¹. Provision may be made by rules of court² as to the cases in which the jurisdiction of the High Court may be exercised by such circuit judges, deputy circuit judges³ or recorders⁴ as the Lord Chancellor⁵ may from time to time nominate to deal with TCC business⁶. The TCC is presided over by a judge of the Queen's Bench Division.

1 See CPR Pt 60; *Practice Direction--Technology and Construction Court Claims* PD 60; and CIVIL PROCEDURE vol 12 (2009) PARA 1546.

2 As to rules of court generally see PARA 575 et seq ante.

3 As to the appointment and qualification of circuit judges and deputy circuit judges see PARAS 522-525 ante.

4 As to the appointment and qualification of recorders see PARAS 526-528 ante.

5 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

⁶ See the Supreme Court Act 1981 s 68(1)(b) (amended by the Administration of Justice Act 1982 s 59(1), (2)), which refers to 'official referee's business'. As to the jurisdiction of TCC judges see eg *Fawdry & Co (a firm) v Murfitt* [2002] EWCA 643, [2002] All ER (D) 195 (May).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/617. Family Division.

617. Family Division.

To the Family Division are assigned by the Supreme Court Act 1981¹:

- 217 (1) all matrimonial causes and matters (whether at first instance or on appeal);²
- 218 (2) all causes and matters (whether at first instance or on appeal) relating to:⁵
 6. (a) legitimacy³;
 7. (b) the exercise of the inherent jurisdiction of the High Court with respect to minors, the maintenance of minors and any proceedings under the Children Act 1989, except proceedings solely for the appointment of a guardian of a minor's estate⁴;
 8. (c) adoption⁵;
 9. (d) non-contentious or common form probate business⁶;
- 6
- 219 (3) applications for consent to the marriage of a minor or for a declaration under the provisions of the Marriage Act 1949 relating to marriages in respect of which there would otherwise be an impediment of affinity⁷;
- 220 (4) proceedings on appeal under the Administration of Justice Act 1960⁸ from an order or decision made under the Magistrates' Courts Act 1980⁹ to enforce an order of a magistrates' court made in matrimonial proceedings or proceedings under Part IV of the Family Law Act 1996¹⁰ or with respect to guardianship of a minor¹¹;
- 221 (5) proceedings under the Children Act 1989¹²;
- 222 (6) all proceedings under:⁷
 10. (a) Part IV of the Family Law Act 1996¹³;
 11. (b) the Child Abduction and Custody Act 1985¹⁴;
 12. (c) the Family Law Act 1986¹⁵;
 13. (d) the provision of the Human Fertilisation and Embryology Act 1990 relating to parental orders for gamete donors¹⁶;
- 8

- 223 (7) all proceedings for the purpose of enforcing an order made in any proceedings of a type described in this paragraph¹⁷; and
 224 (8) all proceedings under the Child Support Act 1991¹⁸.

Although not assigned to any Division, proceedings which invoke the jurisdiction of the High Court to grant declarations as to the best interests of incapacitated adults are more suitable for hearing in the Family Division¹⁹.

1 See the Supreme Court Act 1981 s 61(1), Sch 1 para 3 (as amended); and the text and notes 2-18 *infra*.

2 Ibid Sch 1 para 3(a). See generally *MATRIMONIAL AND CIVIL PARTNERSHIP LAW*. For the meaning of 'cause' and 'matter' see PARA 611 note 1 *ante*. Note that the new civil procedure (see *CIVIL PROCEDURE* vol 11 (2009) PARA 24 *et seq*) no longer employs this terminology: see *CIVIL PROCEDURE* vol 11 (2009) PARA 18. Most family proceedings, however, are not governed by the Civil Procedure Rules: see PARAS 575-576 *ante*.

3 Supreme Court Act 1981 Sch 1 para 3(b)(i).

4 Ibid Sch 1 para 3(b)(ii) (substituted by the Children Act 1989 108(5), Sch 13 para 45(3)). Proceedings relating to the appointment of guardians of minors' estates are assigned to the Chancery Division: see PARA 611 *ante*.

5 Supreme Court Act 1981 Sch 1 para 3(b)(iii) (amended by the Family Law Reform Act 1987 s 33(4), Sch 4).

6 Supreme Court Act 1981 Sch 1 para 3(b)(iv). Contentious probate proceedings are assigned to the Chancery Division: see PARA 611 *ante*.

7 Ibid Sch 1 para 3(c) (amended by the Marriage (Prohibited Degrees of Relationship) Act 1986 s 5). The declaration referred to is a declaration under the Marriage Act 1949 s 27B (as added): see *MATRIMONIAL AND CIVIL PARTNERSHIP LAW* vol 72 (2009) PARA 93.

8 *Ie* under the Administration of Justice Act 1960 s 13 (as amended): see *CONTEMPT OF COURT* vol 9(1) (Reissue) PARA 912 *et seq*.

9 *Ie* under the Magistrates' Courts Act 1980 s 63(3): see *CONTEMPT OF COURT* vol 9(1) (Reissue) PARA 478.

10 *Ie* under the Family Law Act 1996 Pt IV (ss 30-63) (as amended) (family homes and domestic violence): see *MATRIMONIAL AND CIVIL PARTNERSHIP LAW* vol 72 (2009) PARA 285 *et seq*.

11 Supreme Court Act 1981 Sch 1 para 3(d) (amended by the Family Law Act 1996 s 66(1), Sch 8 para 51).

12 Supreme Court Act 1981 Sch 1 para 3(e) (added by the Children Act 1989 s 92(11), Sch 11 para 9).

13 See the Supreme Court Act 1981 Sch 1 para 3(f)(i) (Sch 1 para 3(f), (g) added by the High Court (Distribution of Business) Order 1991, SI 1991/1210; the Supreme Court Act 1981 Sch 1 para 3(f)(i) substituted by the Family Law Act 1996 Sch 8 para 51). See also note 10 *supra*, the text to which appears to duplicate this provision.

14 Supreme Court Act 1981 Sch 1 para 3(f)(ii) (as added: see note 13 *supra*).

15 Ibid Sch 1 para 3(f)(iii) (as added: see note 13 *supra*).

16 *Ie* under the Human Fertilisation and Embryology Act 1990 s 30: see the Supreme Court Act 1981 Sch 1 para 3(f)(iv) (as added: see note 13 *supra*).

17 Ibid Sch 1 para 3(g) (as added: see note 13 *supra*).

18 Ibid Sch 1 para 3(h) (added by the High Court (Distribution of Business) Order 1993, SI 1993/622).

19 *Practice Direction (incapacitated adults: declaratory proceedings)* [2002] 1 All ER 794, [2002] 1 WLR 325, Fam D, para 1. Such proceedings are civil proceedings to which the Civil Procedure Rules apply. Permanent vegetative state cases must be issued in the Principal Registry of the Family Division and will be determined by the President of that Division or by a judge nominated by her. Interlocutory applications will be heard by the President or by the nominated judge: para 2(a). Other proceedings may be commenced in any registry but must be determined by a judge of the Family Division. Interlocutory applications are to be heard by a judge of that Division: para 2(b). *Practice Note (Official Solicitor: declaratory proceedings: medical and welfare decisions for*

adults who lack capacity) [2001] 2 FCR 569, dated 1 May 2001 and issued by the Official Solicitor, provides valuable guidance in relation to these proceedings and is to be followed: *Practice Direction (incapacitated adults: declaratory proceedings)* [2002] 1 All ER 794, [2002] 1 WLR 325, Fam D, para 3.

As to the proper relationship between the Family Division and the Administrative Court see also *A (a patient) v A Health Authority and linked applications* [2002] EWHC 18 (Fam), [2002] 1 FCR 481, [2002] All ER (D) 187 (Jan).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

617 Family Division

TEXT AND NOTES--Also, head (9) all proceedings under the Gender Recognition Act 2004 ss 6, 8: 1981 Act Sch 1 para 3(i) (added by the High Court (Distribution of Business) Order 2004, SI 2004/3418).

Also, heads (10) all civil partnership causes and matters (whether at first instance or on appeal); (11) applications for consent to the formation of a civil partnership by a minor or for a declaration under the Civil Partnership Act 2004 Sch 1 para 7; (12) applications under the Civil Partnership Act 2004 s 58 (declarations relating to civil partnerships): 1981 Act Sch 1 para 3(i)-(k) (added by Civil Partnership Act 2004 Sch 27 para 70). See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

Also, head (13) proceedings under the Childcare Act 2006 s 79: 1981 Act Sch 1 para 3(ea) (added by Childcare Act 2006 Sch 2 para 3). See further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1157.

TEXT AND NOTES 13-16--Also, head (6)(e) EC Council Regulation 2201/2003: 1981 Act Sch 1 para 3(f)(v) (added by the European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005, SI 2005/265).

NOTE 13--1981 Act Sch 1 para 3(f)(i) and amended by the Forced Marriage (Civil Protection) Act 2007 s 3(1), Sch 2 Pt 1 para 1.

NOTE 16--1981 Act Sch 1 para 3(f)(iv) substituted: Human Fertilisation and Embryology Act 2008 Sch 6 para 21.

NOTE 19--*Practice Note* superseded by *Practice Note (Official Solicitor: Declaratory Proceedings: Medical and Welfare Decisions for Adults who Lack Capacity)* [2006] 2 FLR 373, dated 28 July 2006 and issued by the Official Solicitor.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iii) Distribution of Business/618. Business assigned to specially nominated judges.

618. Business assigned to specially nominated judges.

Any business assigned, in accordance with the Supreme Court Act 1981 or any other Act¹ or rules of court², to one or more specially nominated judges of the High Court³ may be dealt with during vacation⁴, or during the illness or absence of that judge or any of those judges, or for any other reasonable cause, by any judge of the High Court named for that purpose by the Lord Chancellor⁵.

If at any time it appears to the Lord Chancellor desirable to do so with a view to the more convenient administration of justice, he may by order direct that business of any description which is for the time being assigned⁶ to one or more specially nominated judges of the High Court is to cease to be so assigned and may be dealt with by any one or more judges of the High Court⁷. Such an order may not, however, be made in respect of any business without the concurrence of the senior judge⁸ of the Division to which the business is for the time being assigned⁹.

1 le including an Act passed after the Supreme Court Act 1981: see s 151(1). As to business assigned to specially nominated judges see s 6; and PARAS 612, 615 ante.

2 As to rules of court generally see PARA 575 et seq ante; and as to the assignment of business to nominated judges by the Civil Procedure Rules and practice directions supplementary thereto see eg *Practice Direction--Technology and Construction Court Claims* PD 60 para 6.1; and CIVIL PROCEDURE vol 12 (2009) PARA 1546.

3 As to the appointment and qualification of High Court judges see PARA 515 et seq ante.

4 As to court vacations see PARAS 505-507 ante.

5 Supreme Court Act 1981 s 63(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 le in accordance with the Supreme Court Act 1981 or any other Act, including one passed after the 1981 Act, or rules of court: Supreme Court Act 1981 ss 63(2), 151(1).

7 Ibid s 63(2). Such orders are not made by statutory instrument.

8 For the meaning of 'senior judge' see PARA 610 note 5 ante.

9 Supreme Court Act 1981 s 63(3).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

618 Business assigned to specially nominated judges

TEXT AND NOTES--1981 Act s 63 amended: Constitutional Reform Act 2005 Sch 4 para 130.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iv) Judges/619. The judges of the High Court.

(iv) Judges

619. The judges of the High Court.

The composition of the High Court and its various Divisions, and the qualifications, appointment, tenure, salaries and pensions of its judges, have already been discussed¹.

In addition to the exercise of the general jurisdiction assigned to the Divisions of the High Court², the judges of the High Court may be called upon to sit in certain other courts or tribunals or be nominated to exercise certain special jurisdictions which have been conferred on the High Court. Thus, a judge may be requested by the Lord Chancellor³ to sit as an additional judge of the Court of Appeal⁴ or by the Lord Chief Justice⁵ to sit in the Criminal Division of that court⁶. A judge of the High Court may exercise the jurisdiction and powers of the Crown Court⁷, and is, by virtue of his office, capable of sitting as a judge for any county court district⁸.

The Courts-Martial Appeal Court may include such of the judges of the Queen's Bench Division as the Lord Chief Justice may nominate for the purpose⁹. One or more High Court judges may be nominated by the Lord Chancellor to act for the purposes of the Mental Health Act 1983¹⁰. In the High Court, nominated judges exercise the jurisdiction of the Patents, Admiralty, Commercial and Technology and Construction Courts¹¹ and hear appeals from a Pensions Appeal Tribunal¹². A rota of judges of the Queen's Bench Division sits for the trial of election petitions¹³.

Every judge of the High Court is liable¹⁴ to perform any duty, and is empowered¹⁵ to exercise any authority or power, not incident to the administration of justice in any court of law which a judge of the High Court was, as the successor of any judge formerly subject to that duty or possessing that authority or power, liable to perform or empowered to exercise immediately before 1 January 1982¹⁶ by virtue of any statute, law or custom¹⁷. Any such duty, authority or power which immediately before that date was imposed or conferred by any statute, law or custom on the Lord Chancellor, the Lord Chief Justice or the Master of the Rolls¹⁸ continues to be performed or exercised by them respectively¹⁹.

1 As to the composition of the High Court and its Divisions see PARAS 602-603 ante; as to the qualifications, appointment, tenure and salaries of High Court judges see PARA 515 et seq ante; and as to judicial pensions see PARA 537 et seq ante.

2 See PARA 606 et seq ante.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 See the Supreme Court Act 1981 s 9(1), (1A), (2) (as amended); and PARA 519 ante.

5 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

6 See note 4 supra.

7 See the Supreme Court Act 1981 s 8(1); and PARA 623 post.

8 See the County Courts Act 1984 s 5(3); and PARA 724 post.

9 See the Courts-Martial (Appeals) Act 1968 s 2(1)(a) (as amended); para 802 post; and ARMED FORCES.

- 10 See the Mental Health Act 1983 s 93(1); and MENTAL HEALTH vol 30(2) (Reissue) PARA 674.
- 11 See PARAS 612, 615-616 ante.
- 12 See the Pensions Appeal Tribunals Act 1943 s 6(2) (as amended); and ARMED FORCES.
- 13 See the Supreme Court Act 1981 s 142 (as amended); and ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 767.
- 14 Is subject to the provisions of the Supreme Court Act 1981: see s 44(1).
- 15 See note 14 supra.
- 16 Is the commencement date of the Supreme Court Act 1981: see s 153(2).
- 17 Ibid s 44(1). Under this provision High Court judges as successors to the judges of the old courts of common law and equity continue to be able to exercise their visitatorial jurisdiction in respect of the Inns of Court, which includes the hearing of appeals in disciplinary cases affecting barristers. This jurisdiction is vested in themselves as a domestic tribunal and not in the courts of which they are judges: see *R v Benchers of Gray's Inn* (1780) 1 Doug KB 353. See also *R v Visitors to the Inns of Court, ex p Calder* [1994] QB 1, [1993] 2 All ER 876, CA; and LEGAL PROFESSIONS.
- 18 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.
- 19 Supreme Court Act 1981 s 44(2). Such functions may, however, have been transferred elsewhere by subsequent enactments; eg the Master of the Rolls' jurisdiction in relation to public records was transferred to the Lord Chancellor by the Public Records Act 1958 s 1 (now as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 837.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

619 The judges of the High Court

NOTES--See *Coppard v Customs and Excise Comrs* [2003] EWCA Civ 511, [2003] 3 All ER 351 (judge authorised to hear cases from Technology and Construction Court did not lack requisite knowledge or competence to hear other High Court cases).

TEXT AND NOTE 19--In 1981 Act s 44(2) omit 'the Lord Chancellor,': Constitutional Reform Act 2005 Sch 4 para 126, Sch 18 Pt 2.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(2) THE HIGH COURT/(iv) Judges/620. Other judges as judges of the High Court.

620. Other judges as judges of the High Court.

A judge or former judge of the Court of Appeal¹ may sit, on the Lord Chancellor's² request, as a judge of the High Court³, as may a circuit judge⁴ or recorder⁵ if so requested⁶.

1 As to judges of the Court of Appeal see PARA 637 post.

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 See the Supreme Court Act 1981 s 9(1), (1A), (2) (as amended); and PARA 519 ante.

4 As to the appointment and qualification of circuit judges see PARAS 522-525 ante.

5 As to the appointment and qualification of recorders see PARAS 526-528 ante.

6 See note 3 supra.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/(i) Establishment and Constitution of the Crown Court/621. Establishment of the Crown Court.

(3) THE CROWN COURT

(i) Establishment and Constitution of the Crown Court

621. Establishment of the Crown Court.

The Crown Court was established by the Courts Act 1971 and supersedes the criminal jurisdiction of courts of assize and all the judicial jurisdiction of courts of quarter sessions¹. It is part of the Supreme Court, with jurisdiction throughout England and Wales, and is a superior court of record² whose jurisdiction includes all such powers and duties as were exercisable or fell to be performed by it immediately before 1 January 1982³. The Crown Court is, however, subject in certain respects to the supervisory jurisdiction of the High Court⁴; but only where such jurisdiction is expressly granted under the relevant provisions⁵ of the Supreme Court Act 1981⁶.

The Crown Court is a single, indivisible court⁷ with inherent jurisdiction to amend or rectify its own orders⁸.

In relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, the court has the same powers, rights, privileges and authority as the High Court⁹.

Fees to be taken in the Crown Court may be prescribed by the Lord Chancellor¹⁰ by order made by statutory instrument¹¹.

The officers of the court¹² are responsible for keeping the records of proceedings, the signing of indictments, the notification to the parties or their legal advisers of the place and time appointed for any proceedings and such other formal or administrative matters as may be specified by directions given by Lord Chancellor¹³.

The jurisdiction and powers of the Crown Court may be exercised by any High Court judge, circuit judge or recorder, sitting with or without justices of the peace¹⁴.

A review of the criminal courts of England and Wales was undertaken by Lord Justice Auld and reported to the government in 2001. Among the recommendations contained in the report was the replacement of the existing criminal court structure (Crown Court and magistrates' courts) with a unified Criminal Court consisting of three divisions¹⁵. These recommendations have not been implemented¹⁶.

1 See the Courts Act 1971 ss 1(1), 4(1) (repealed).

2 Supreme Court Act 1981 s 45(1).

3 Ibid s 45(3). 1 January 1982 is the commencement date of the Supreme Court Act 1981: see s 153(2). As to the jurisdiction of the Crown Court see PARA 625 et seq.

4 The orders, judgments and other decisions of the Crown Court, not relating to trials on indictment or certain specified appellate jurisdiction, may be questioned by any party to the proceedings on the ground that they are wrong in law or in excess or jurisdiction by applying to the Crown Court to have a case stated for the opinion of the High Court: see ibid s 28(1), (2) (as amended); and CIVIL PROCEDURE vol 12 (2009) PARAS 1688, 1690. The High Court may make mandatory, prohibiting or quashing orders in relation to the jurisdiction of the Crown Court other than its jurisdiction in matters relating to trials on indictment: see s 29(3) (which refers to orders of orders of mandamus, prohibition or certiorari (now known as mandatory orders, prohibiting orders and quashing orders: see CPR 51.1(2); and JUDICIAL REVIEW vol 61 (2010) PARA 687)); and CIVIL PROCEDURE vol 12 (2009) PARA 1688. Either method of supervision may be used, according to convenience: *R v Crown Court at Ipswich, ex p Baldwin* [1981] 1 All ER 596n, DC.

As to the Crown Court's exclusive jurisdiction in relation to trials on indictment see PARA 625 post. The question whether the court has jurisdiction to try an indictment is a matter 'relating to trial on indictment' within the Supreme Court Act 1981 s 29(3) (*R v Crown Court at Manchester, ex p DPP* [1994] 1 CMLR 457, HL) as is an order of the Crown Court staying proceedings on an indictment (*Re Ashton, R v Crown Court at Manchester, ex p DPP* [1994] AC 9, 97 Cr App Rep 203, HL). The High Court's power to make prerogative orders under the Supreme Court Act 1981 s 29(3) is not limited to matters of jurisdiction but extends to all situations where the orders are commonly used: *R v Crown Court at Leeds, ex p City of Bradford Chief Constable* [1975] QB 314, [1975] 1 All ER 133. See eg *Ex p Marlowe* [1973] Crim LR 294, DC (mandamus (now a mandatory order) refused on application to compel Crown Court judge to proceed with original jury); *R v Crown Court at Sheffield, ex p Brownlow* [1980] QB 530, [1980] 2 All ER 444, CA (no jurisdiction to entertain application to quash order for disclosure of convictions recorded against jury panel); *R v Central Criminal Court, ex p Raymond* [1986] 2 All ER 379, DC (no jurisdiction to review decision ordering indictment to lie on file); *Ex p Meredith* [1973] 2 All ER 234, [1973] 1 WLR 435, DC (no jurisdiction to entertain an application for certiorari (now a quashing order) in respect of a refusal by the Crown Court to award costs after a trial on indictment); *R v Cardiff Crown Court, ex p Jones* [1974] QB 113, [1973] 3 All ER 1027, DC (no jurisdiction to entertain an application for certiorari (now a quashing order) in respect of a contribution order made against legally aided defendants acquitted on a trial on indictment); *R v Smith* [1975] QB 531, [1974] 1 All ER 651, CA (no jurisdiction to entertain an appeal by a solicitor who has been ordered personally to pay costs occasioned by an adjournment in the Crown Court). There is jurisdiction to review an order estreating a surety's recognisance because such an order is not a matter relating to trial on indictment: *Re Smalley* [1985] AC 622, [1985] 1 All ER 769, HL. As to the review of the exercise of the court's discretion in care proceedings see *Re S (a minor)* [1978] QB 120, [1977] 3 All ER 582, CA. For the purposes of the Supreme Court Act 1981 s 29(3), the jurisdiction conferred on the Crown Court by the Prosecution of Offences Act 1985 s 22 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1152) must be taken to be part of its jurisdiction in matters other than those relating to trial on indictment: s 22(13).

5 le under the Supreme Court Act 1981 ss 28, 29 (as amended): see note 4 supra.

6 *R v Crown Court at Chelmsford, ex p Chief Constable of the Essex Police* [1994] 1 All ER 325, [1994] 1 WLR 359, DC.

7 *R v Slatter* [1975] 3 All ER 215, [1975] 1 WLR 1084.

8 *R v Michael* [1976] QB 414, [1976] 1 All ER 629.

9 Supreme Court Act 1981 s 45(4). This is subject to the Criminal Procedure (Attendance of Witnesses) Act 1965 s 8 (as amended) and to any provision contained in or having effect under the Supreme Court Act 1981: s 45(4).

10 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

11 See the Supreme Court Act 1981 s 130; and CIVIL PROCEDURE. The concurrence of the Lord Chief Justice is required for the making of any such order relating exclusively to fees to be taken in connection with proceedings in the Crown Court: s 130(2)(b). As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

12 As to the appointment of officers of the court see the Courts Act 1971 s 27 (as substituted); and PARA 514 ante.

13 Supreme Court Act 1981 s 82(1). They must in particular give effect to any orders or directions of the court for taking into custody and detaining any person committing contempt of court, and must execute any order or warrant duly issued by the court for the committal of any person to prison for contempt of court: s 82(2).

14 See *ibid* s 8(1); and PARA 633 post.

15 See *A Review of the Criminal Courts of England and Wales* (2001) Ch 2 para 4. At the date at which this title states the law, the full text of the report was available on the Lord Chancellor's Department website at www.lcd.gov.uk.

16 The period for public comment on the proposals ended on 31 January 2002 and was to be followed by the publication of a White Paper.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

621 Establishment of the Crown Court

NOTE 4--See *R (on the application of Customs and Excise Comrs) v Crown Court at Canterbury* [2002] EWHC 2584 (Admin), [2002] All ER (D) 54 (Dec) (trial judge had no jurisdiction to make orders against non-parties to trial he was to conduct).

NOTE 9--The Crown Court has no general power or to grant injunctions, nor any inherent jurisdiction to do so on the basis that it is seeking to achieve a desirable objective: *Re Trinity Mirror plc* [2008] EWCA Crim 50, [2008] 2 All ER 1159 (protection of private life of offender's children not 'incidental to' its jurisdiction).

NOTE 11--1981 Act s 130 repealed: Courts Act 2003 Sch 8 para 263, Sch 10.

TEXT AND NOTE 13--1981 Act s 82 amended: Constitutional Reform Act 2005 Sch 4 para 135; Coroners and Justice Act 2009 s 116(2), Sch 23 Pt 3.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/(i) Establishment and Constitution of the Crown Court/622. Sittings.

622. Sittings.

Subject to certain provisions concerning a court comprising justices of the peace¹, all proceedings in the Crown Court are to be heard and disposed of before a single judge². Any Crown Court business may be conducted at any place in England or Wales and the sittings of the court at any place may be continuous or intermittent or occasional³. Judges may sit simultaneously to take any number of different cases in the same or in different places, and may adjourn cases from place to place at any time⁴.

The cases or classes of cases suitable for allocation respectively to a High Court judge⁵, and to a circuit judge or recorder⁶, and all other matters relating to the distribution of Crown Court business, are determined in accordance with directions given by or on behalf of the Lord Chief Justice⁷ with the Lord Chancellor's concurrence⁸. Certain forms of jurisdiction may be exercised by a judge sitting in chambers⁹ and provision is also made for the court to exclude the press and public¹⁰.

Rights of audience in the Crown Court and rights to conduct criminal proceedings have already been discussed¹¹.

1 See the Supreme Court Act 1981 s 8(1)(c), s 74 (as amended), s 75(2); and PARA 623 post.

2 Ibid s 73(1).

3 Ibid s 78(1). The places at which the Crown Court sits, and the days and times at which the Crown Court sits at any place, are determined in accordance with directions given by the Lord Chancellor: s 78(3). As to the locations of the Crown Court see PARAS 631-632 post. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Ibid s 78(2).

5 As to the appointment and qualifications of High Court judges see PARA 515 et seq ante.

6 As to the appointment and qualifications of circuit judges and recorders see PARAS 522-528 ante.

7 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

8 Supreme Court Act 1981 s 75(1). See PARA 511 ante, para 631 post.

9 See the Crown Court Rules 1982, SI 1982/1109, r 27(1). That jurisdiction is (1) hearing applications for bail; (2) issuing a summons or warrant; (3) hearing any application relating to procedural matters preliminary or incidental to proceedings in the Crown Court, including applications relating to legal aid but not including an application for a direction varying the place of trial on indictment under the Supreme Court Act 1981 s 76(3) (as amended); (4) jurisdiction under the Crown Court Rules 1982, SI 1982/1109, r 7(7) (as substituted and amended) (extending the time for giving notice of appeal); r 9 (as amended) (appointment of children's guardian for child or young person); r 23 (as substituted) (hearing application for witness summons); r 25 (as amended) (hearing appeal against refusal to excuse from jury service or to defer attendance); r 26 (hearing application to state a case for the opinion of the High Court); (5) hearing an application under the Youth Justice and Criminal Evidence Act 1999 s 41(2); (6) hearing applications under the Prosecution of Offences Act 1985 s 22(3) (as substituted) for the extension or further extension of a time limit imposed by regulations made under

s 22(1); (7) hearing an appeal brought by an accused under s 22(7)(as amended) against a decision of a magistrates' court to extend, or further extend, such a time limit or brought by the prosecution under s 22(8) (as amended) against a decision of a magistrates' court to refuse to extend, or further extend, such a time limit; (8) hearing appeals under the Bail (Amendment) Act 1993 s 1; (9) jurisdiction under the Crown Court Rules 1982, SI 1982/1109, r 24ZA (as added) (listing the first Crown Court appearance of the person to whom a notice which has been given under the Crime and Disorder Act 1998 s 51(7) relates): Crown Court Rules 1982, SI 1982/1109, r 27(2) (amended by SI 1988/1635; SI 1994/1480; SI 2000/2987; 2000/3362). See further CHILDREN AND YOUNG PERSONS; CRIMINAL LAW, EVIDENCE AND PROCEDURE.

10 See the Crown Court Rules 1982, SI 1982/1109, rr 24A, 32 (as added). See also CRIMINAL LAW, EVIDENCE AND PROCEDURE. As to public and private proceedings see generally para 312 ante.

11 See PARAS 331-332 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

622 Sittings

TEXT AND NOTES 3, 4--1981 Act s 78 amended: Constitutional Reform Act 2005 Sch 4 para 134.

TEXT AND NOTE 8--The Lord Chancellor's function under the 1981 Act s 75 is a protected function for the purposes of the 2005 Act s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTES 9, 10--SI 1982/1109 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR').

NOTE 9--SI 1982/1109 r 27 now CrimPR 16.11.

NOTE 10--SI 1982/1109 rr 24A, 32 now CrimPR 16.10, 32.3.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/(i) Establishment and Constitution of the Crown Court/623. Justices of the peace as judges.

623. Justices of the peace as judges.

On the hearing of any appeal by the Crown Court¹, the court must consist of a High Court judge² or a circuit judge or recorder³ who must sit with two, three or four justices of the peace⁴. Subject to this provision, any jurisdiction or power of the court may be exercised by a High Court judge, circuit judge or recorder sitting with not more than four justices⁵. The cases or classes of case suitable for allocation to a court comprising justices, including those by way of trial on indictment⁶ which are suitable for allocation to such a court, are determined in

accordance with directions given by or on behalf of the Lord Chief Justice⁷ with the Lord Chancellor's concurrence⁸.

When a High Court judge, circuit judge or recorder sits with justices he presides⁹. The decision may be a majority one¹⁰, and if the members are equally divided he has a second and casting vote¹¹.

A justice is not disqualified from acting for the reason that the proceedings are not at a place within the area for which he was appointed as a justice, or because the proceedings are not related to that area in any other way¹². A justice must not sit on the hearing of an appeal in a matter on which he adjudicated¹³.

The Crown Court may at any stage continue with any proceedings with a court from which any one or more of the justices initially comprising the court has withdrawn, or is absent for any reason¹⁴.

1 As to appeals to the Crown Court see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1980 et seq.

2 As to the appointment and qualifications of High Court judges see PARA 515 et seq ante.

3 As to the appointment and qualifications of circuit judges and recorders see PARAS 522-528 ante.

4 Supreme Court Act 1981 s 74(1) (s 74(1), (7) amended by the Access to Justice Act 1999 ss 79, 105, 106, Sch 14 para 27, Sch 15 Pt V(4)). Crown Court Rules may, with respect to hearings falling within the Supreme Court Act 1981 s 74(1) (as so amended), prescribe the number of justices of the peace constituting the court (within the limits mentioned in that subsection) and prescribe the qualifications to be possessed by any such justices of the peace; and the rules may make different provision for different descriptions of cases, different places of sitting or other different circumstances: s 74(2). Crown Court Rules may also authorise or require a judge of the High Court, circuit judge or recorder, in such circumstances as are specified by the rules, to enter on, or at any stage to continue with, any proceedings with a court not comprising the justices required by s 74(1) (as so amended) and s 74(2): s 74(3). Furthermore, the Lord Chancellor may from time to time, having regard to the number of justices, or the number of justices with any prescribed qualifications, available for service in the Crown Court, give directions providing that, in such descriptions of proceedings as may be specified by the Lord Chancellor, the provisions of those subsection shall not apply: s 74(4). Such directions may frame descriptions of proceedings by reference to the place of trial, or by reference to the time of trial, or in any other way: s 74(5). No decision of the Crown Court may be questioned on the ground that the court was not constituted as required by or under s 74(1) (as so amended) or s 74(2) unless objection was taken by or on behalf of a party to the proceedings not later than the time when the proceedings were entered on, or when the alleged irregularity began: s 74(6).

On the hearing of an appeal (1) against a decision of licensing justices under the Licensing Act 1964, the Crown Court must consist of a judge sitting with four justices, each of whom is a member of a licensing committee appointed under s 2, Sch 1 (as amended) and two (but not more than two) of whom are justices for the petty sessions area in which the premises to which the appeal relates are situated; (2) against a decision of any authority under the Betting, Gaming and Lotteries Act 1963 or the Gaming Act 1968, the Crown Court must consist of a judge sitting with four justices, two (but not more than two) of whom are justices for the petty sessions area in which the premises to which the appeal relates are situated: (3) from a youth court, the Crown Court must consist of a judge sitting with two justices each of whom is a member of a youth court panel and who are chosen so that the court includes a man and a woman: Crown Court Rules 1982, SI 1982/1109, r 3(2)-(4) (rr 3, 4 amended by SI 1999/2838; and by virtue of the Criminal Justice Act 1991 s 70). These provisions are subject to any directions under the Supreme Court Act 1981 s 74(4): Crown Court Rules 1982, SI 1982/1109, r 3(1). The Crown Court may, however, enter on any appeal notwithstanding that the court is not constituted as required by the above provisions if it appears to the judge that the court could not be constituted without unreasonable delay and the court includes (a) in a case to which head (1) supra applies, at least two justices each of whom is a member of a committee specified in that head, provided that the court includes a justice for the petty sessions area so specified and a justice for some other area; (b) in a case to which head (2) supra applies, at least two justices including a justice for the petty sessions area so specified and a justice for some other area; (c) in a case to which head (3) supra applies, one justice who is a member of a youth court panel; (d) in any other case, one justice; and the judge may sit without one or both of the justices required by heads (a) and (b) if the parties appearing at the hearing of the appeal agree: see r 4(1) (as so amended).

Crown Court Rules may also make provision as to the circumstances in which a person concerned with a decision appealed against is to be disqualified from hearing the appeal, or in which proceedings on the hearing of an appeal are to be valid notwithstanding that any person taking part in them is disqualified: Supreme Court

Act 1981 s 74(7) (as so amended). See the Crown Court Rules 1982, SI 1982/1109, r 5 (as amended); and the text and note 13 infra.

5 Supreme Court Act 1981 s 8(1).

6 As to the Crown Court's exclusive jurisdiction on indictment see PARA 625 post; and as to trials on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1232 et seq.

7 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

8 Supreme Court Act 1981 s 75(2). In addition to appeals and committals for sentence any other proceedings apart from cases listed for pleas of not guilty which, in accordance with the Lord Chief Justice's directions, are listed for hearing by a circuit judge or recorder, are suitable for allocation to a court comprising justices of the peace: *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 8. These are, in general, proceedings under Class 3 and Class 4 (but not under Class 1 and Class 2), and, normally, all other Crown Court proceedings except applications for directions varying the place of trial. As to the distribution of business to circuit judges and recorders and the classification of offences see PARA 631 post.

9 Supreme Court Act 1981 s 73(3). In making a decision the justices take part with the judge on an equal footing, but must defer to his decision on any question of law: *R v Orpin* [1974] 2 All ER 1121, [1974] 3 WLR 252, CA.

10 Supreme Court Act 1981 s 73(3)(a).

11 Ibid s 73(3)(b). If a two-member court irreconcilably disagrees as to whether or not a necessary fact has been established and the presiding judge or recorder considers it inappropriate to use his casting vote under s 73(3), the court should in the last resort abandon the case to be relisted before another court: *DPP v Szarzynski* [1993] RTR 364, DC.

12 Supreme Court Act 1981 s 8(2).

13 Crown Court Rules 1982, SI 1982/1109, r 5 (amended by SI 1999/2838).

14 Crown Court Rules 1982, SI 1982/1109, r 4(3). Rule 4(3) is made under the Supreme Court Act 1981 s 73(2), which provides that Crown Court rules may authorise or require a judge of the High Court, circuit judge or recorder, in such circumstances as are specified by the rules, at any stage to continue with any proceedings with a court from which any one or more of the justices initially constituting the court has withdrawn, or is absent for any reason.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

623 Justices of the peace as judges

NOTES 4, 14--For 'Crown Court rules' read 'Rules of court': Supreme Court Act 1981 ss 73(2), 74(2), (3), (7) (now Senior Courts Act 1981 ss 73(2), 74(2), (3), (7)) (amended by SI 2004/2035).

TEXT AND NOTES 4, 8--The Lord Chancellor's functions under the 1981 Act ss 74, 75 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s

19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 4--See further 1981 Act s 74(5A), (8) (added by 2005 Act Sch 4 para 133).

NOTE 4--SI 1982/1109 replaced for the most part by Criminal Procedure Rules 2005, SI 2005/384 ('CrimPR'). SI 1982/1109 rr 3-5 now CrimPR 63.7-63.9.

TEXT AND NOTE 12--1981 Act s 8(2) substituted: Courts Act 2003 Sch 8 para 259.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/(i) Establishment and Constitution of the Crown Court/624. Central Criminal Court.

624. Central Criminal Court.

When the Crown Court sits in the City of London it is known as the Central Criminal Court¹. The Lord Mayor and any aldermen are entitled to sit as judges of the Central Criminal Court with any High Court judge² or any circuit judge or recorder³. Any judge sitting at the Central Criminal Court should be addressed as 'My Lord'⁴.

1 Supreme Court Act 1981 s 8(3). The courthouse and accommodation known before 1 January 1972 (the date of the coming into force of the Courts Act 1971: see s 57(1); and the Courts Act 1971 (Commencement) Order 1971, SI 1971/1151) as the Central Criminal Court continue to be known by that name: Courts Act 1971 s 29(1). The court is colloquially known as the 'Old Bailey'.

2 As to the appointment and qualifications of High Court judges see PARA 515 et seq ante.

3 Supreme Court Act 1981 s 8(3). As to the appointment and qualifications of circuit judges and recorders see PARAS 522-528 ante.

4 *Practice Direction* [1982] 1 All ER 320.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/ (ii) Jurisdiction of the Crown Court/625. Exclusive jurisdiction on indictment.

(ii) Jurisdiction of the Crown Court

625. Exclusive jurisdiction on indictment.

All proceedings on indictment must be brought before the Crown Court¹. This jurisdiction includes jurisdiction in proceedings on indictment for offences wherever committed and, in particular, proceedings on indictment for offences within the jurisdiction of the Admiralty of England².

Subject to any provision contained in or having effect under the Courts Act 1971, all enactments and rules of law relating to procedure in connection with indictable offences continued to have effect subject only to those modifications rendered necessary by the transfer of jurisdiction³; and they continue to have effect by virtue of the Supreme Court Act 1981⁴. In particular, the following continue to have effect:

- 225 (1) the practice by which, on any one indictment, the taking of pleas, the trial by jury and the pronouncement of judgment may respectively be by or before different judges;
- 226 (2) the release, after respite of judgment, of a convicted person on recognisance to come up for judgment if called on, but meanwhile to be of good behaviour;
- 227 (3) the manner of trying any question relating to the breach of a recognisance;
- 228 (4) the manner of execution of any sentence on conviction, or the manner in which any other judgment or order given in connection with trial on indictment may be enforced⁵.

Furthermore, the customary practice and procedure with respect to appeals to the Crown Court, and in particular any practice as to the extent to which an appeal is by way of rehearing of the case, is to continue to be observed⁶.

Although a resident judge in the Crown Court may make practice directions which indicate how in his court powers which the court has will normally be exercised, the court, being a creature of statute, has no power, express or implied, to impose requirements in relation to a defence statement which Parliament has not seen fit to impose⁷.

1 Supreme Court Act 1981 s 46(1). As to proceedings on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1232 et seq.

2 Ibid s 46(2). As to Admiralty jurisdiction see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 79 et seq. The Merchant Shipping Act 1995 ss 280, 281, 282 (offences on ships and abroad by British citizens and others: see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 1104-1106) apply in relation to other offences under the law of England and Wales as they apply in relation to offences under that Act or instruments under that Act: Supreme Court Act 1981 s 46A (added by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 59(1)).

3 See the Courts Act 1971 s 6(3) (repealed).

4 See the Supreme Court Act 1981 s 79(1).

5 Ibid s 79(2). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1232.

6 Ibid s 79(3). As to appeals to the Crown Court see s 48 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1980 et seq. As to the extent to which appeals to which the Civil Procedure Rules apply may be by way of rehearing see CIVIL PROCEDURE vol 12 (2009) PARA 1673.

7 See *R (on the application of Sullivan) v Crown Court at Maidstone* [2002] EWHC 967 (Admin), [2002] All ER (D) 230 (May) (Crown Court judge had no power to make local practice direction requiring that all defence statements were to be signed by the defendant before being given to the court and the prosecutor).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/ (ii) Jurisdiction of the Crown Court/626. Other jurisdiction.

626. Other jurisdiction.

The Courts Act 1971 transferred to the Crown Court all appellate and other jurisdiction formerly conferred on any court of quarter sessions, or on any committee of a court of quarter sessions, by or under any Act¹, and subject to the provisions of the Act, all the other former powers and duties of quarter sessions were similarly transferred². The Supreme Court Act 1981 now provides for the exercise by the Crown Court of all such appellate and other jurisdiction as is conferred on it by or under that or any other Act, and all such other jurisdiction as was exercisable by it immediately before 1 January 1982³. The jurisdiction of the Crown Court comprises proceedings on the committal of a person for sentence or to be dealt with, appeals from magistrates' courts and other bodies and certain original civil jurisdiction⁴.

¹ See the Courts Act 1971 s 8, Sch 1 para 1 (repealed).

² See *ibid* Sch 1 para 2 (repealed). The Courts Act 1971 made provision for the transfer of functions which were not of a judicial nature (including the deposit of plans and the keeping of records not related to judicial business) to certain local authorities: see s 56, Sch 8 para 1. As to the construction of references to former courts, judges or officials see Sch 8 para 2.

³ See the Supreme Court Act 1981 s 45(2). Without prejudice to s 45(2), the Crown Court's jurisdiction includes all such powers and duties as were exercisable or fell to be performed by it immediately before 1 January 1982 (ie the commencement date of the Supreme Court Act 1981: see s 153(2)): s 45(3). The specific mention elsewhere in the Supreme Court Act 1981 of any jurisdiction covered by s 45(2), (3) does not derogate from the generality of those subsections: s 45(5).

⁴ See PARAS 627-630 *post*.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/ (ii) Jurisdiction of the Crown Court/627. Committals for sentence or to be dealt with.

627. Committals for sentence or to be dealt with.

Where on the summary trial of an offence triable either way¹ a person aged 18 or over is convicted of the offence and the magistrates' court is of the opinion that the offence or the combination of the offence and one or more offences associated with it was so serious that greater punishment should be inflicted for the offence than that court has power to impose², or, in the case of a violent or sexual offence, that a custodial sentence for a term longer than that court has power to impose is necessary to protect the public from serious harm from him, the magistrates' court may commit the offender in custody or on bail to the Crown Court for sentence³. A person may also be committed to the Crown Court for sentence where he indicates that he would plead guilty to an offence triable either way if the offence were to proceed to trial, and the magistrates' court has committed him to the Crown Court for trial for one or more offences which, in its opinion, are related to that offence⁴. The Crown Court must inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court⁵.

The Crown Court also has jurisdiction to deal with a person committed to it by a magistrates' court under the vagrancy laws⁶, or because he has been conditionally discharged and then convicted of a further offence⁷, or has been convicted of an offence committed during the currency of an original sentence⁸ or has been convicted during the operational period of a suspended sentence⁹. In such cases it may also deal with the offender in respect of certain other offences with which the magistrates' court committing him would have had power to deal¹⁰ and may, after inquiring into the circumstances of the case, deal with him in any way in which the magistrates' court could deal with him if it had just convicted him of the offence¹¹.

1 As to offences triable either way see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1103, 1105 et seq.

2 As to the sentencing powers of magistrates' courts see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 1 et seq.

3 See the Powers of Criminal Courts (Sentencing) Act 2000 s 3; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1105, 1123; MAGISTRATES.

4 See *ibid* s 4; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1105, 1127; MAGISTRATES.

5 *Ibid* s 5(1). As to the sentencing powers of the Crown Court see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 1 et seq.

6 *Ie* under the Vagrancy Act 1824: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 833 et seq; MAGISTRATES.

7 See the Powers of Criminal Courts (Sentencing) Act 2000 s 13; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 42-43.

8 See *ibid* s 116; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 26.

9 See *ibid* s 120; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 137.

10 See *ibid* s 6; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1129; SENTENCING AND DISPOSITION OF OFFENDERS.

11 See *ibid* s 7; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 17.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

627 Committals for sentence or to be dealt with

NOTE 8--2000 Act s 116 repealed: Criminal Justice Act 2003 Sch 32 Pt 1 paras 90, 116, Sch 37 Pt 7.

NOTE 9--2000 Act s 120 repealed: 2003 Act Sch 37 Pt 7.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/ (ii) Jurisdiction of the Crown Court/628. Appeals from magistrates' courts and licensing justices.

628. Appeals from magistrates' courts and licensing justices.

There is a right of appeal to the Crown Court¹ in the following cases:

- 229 (1) against sentence² by a magistrates' court on conviction when the offender pleaded guilty³;
- 230 (2) against conviction or sentence by a magistrates' court when the person convicted did not plead guilty⁴;
- 231 (3) against an order requiring a young offender's parent or guardian to pay the unpaid amount of a fine imposed on him⁵;
- 232 (4) against an order by a magistrates' court⁶ requiring a person to enter into recognisances to keep the peace or to be of good behaviour⁷;
- 233 (5) against an order by a magistrates' court binding over the parent or guardian of a young offender⁸;
- 234 (6) against the sentence of a youth court where a young offender is sentenced to detention or a fine for being in breach of supervision requirements⁹;
- 235 (7) against an order by a magistrates' court that the parent or guardian of a young offender is to pay a fine, costs or compensation¹⁰;
- 236 (8) against a sentence passed where a young offender is referred back¹¹ to the appropriate court in certain circumstances¹²;
- 237 (9) against a sentence passed by a magistrates' court dealing with a person who is breach of any of the following orders made by such court:

14. (a) a curfew, probation, community service, combination or drug treatment and testing order¹³;
 15. (b) an attendance centre order¹⁴;
 16. (c) a supervision order¹⁵; or
 17. (d) an action plan order or a reparation order¹⁶;
- 10
- 238 (10) against a costs order made by a magistrates' court against a legal or other representative¹⁷;
 - 239 (11) by the prosecution, against the granting of bail by a magistrates' court in certain cases¹⁸;
 - 240 (12) against certain other orders by a magistrates' court, and in some cases against the dismissal of an information, in proceedings under a large number of enactments¹⁹; and
 - 241 (13) against decisions of licensing justices²⁰ under various enactments²¹, and other decisions of magistrates' courts relating to licensing matters²².

There is no right of appeal against a conviction or order unless it is specifically conferred by statute²³, and there is no right of appeal against the dismissal of an information or complaint unless the statute concerned expressly confers it²⁴.

Many statutes giving rights of appeal to the Crown Court limit them to a person aggrieved²⁵ or to one who thinks himself aggrieved²⁶, and it is necessary to consider the words of each particular statute in its own context²⁷.

The Criminal Cases Review Commission may refer a conviction in, or sentence passed by, a magistrates' court to the Crown Court²⁸.

1 The Powers of Criminal Courts (Sentencing) Act 2000 s 14 (effect of discharge: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 41) does not prevent an appeal under the Magistrates' Courts Act 1980 s 108 (as amended), whether against conviction or otherwise: s 108(1A) (added by the Criminal Justice Act 1982 s 66(2); amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 71).

2 For these purposes, 'sentence' includes any order made on conviction by a magistrates' court, not being (1) an order for the payment of costs; (2) an order under the Protection of Animals Act 1911 s 2 (which enables a court to order the destruction of an animal: see ANIMALS vol 2 (2008) PARA 854); or (3) an order made in pursuance of any enactment under which the court has no discretion as to the making of the order or its terms; and it also includes a declaration of relevance under the Football Spectators Act 1989: Magistrates' Courts Act 1980 s 108(3) (amended by the Criminal Justice Act 1982 s 78, Sch 16; the Football Spectators Act 1989 s 23(3) (c); the Football (Offences and Disorder) Act 1999 s 7(2)(c); and the Football (Disorder) Act 2000 s 1, Sch 3). A person sentenced by a magistrates' court for an offence in respect of which an order for conditional discharge has been previously made may appeal to the Crown Court against the sentence: Magistrates' Courts Act 1980 s 108(2) (amended by the Crime and Disorder Act 1998 ss 119, 120(2), Sch 8, para 43, Sch 10).

3 Magistrates' Courts Act 1980 s 108(1)(a): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1980; MAGISTRATES.

4 Ibid s 108(1)(b).

5 See ibid s 81 (as amended); and MAGISTRATES vol 29(2) (Reissue) PARA 870; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 383.

6 ie under the Justices of the Peace Act 1361: see MAGISTRATES.

7 See the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956 s 1(1), (3) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1980; MAGISTRATES.

8 See the Powers of Criminal Courts (Sentencing) Act 2000 s 150(8).

9 See ibid s 104(6).

10 See ibid s 137(8).

11 See under *ibid* s 22(2), s 25(2) or (3), s 26(5), (8) or (10) or s 27(4): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1296 et seq; MAGISTRATES.

12 See *ibid* Sch 1 para 6.

13 See *ibid* ss 39, 43, 48, 51, 56, Sch 3 paras 4(6), 10(6).

14 See *ibid* s 61, Sch 5 paras 2(6), 4(4).

15 See *ibid* s 65, Sch 7 para 11.

16 See *ibid* ss 72, 75, Sch 8 para 7.

17 See the Magistrates' Courts Act 1980 s 145A(5)(d) (added by the Courts and Legal Services Act 1990 s 112); the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991, SI 1991/2096, rr 2, 3 (as amended); and MAGISTRATES.

18 See the Bail (Amendment) Act 1993 s 1: and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1186; MAGISTRATES.

19 See eg the Children and Young Persons Act 1933 s 102(1) (as amended) (appeal by person aggrieved against an order requiring the owner of cigarette vending machine or the person on whose premises such a machine is kept, to take precautions to prevent the machine being extensively used by persons apparently under the age of 16 years or to remove the machine); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 634; the Protection of Animals Act 1911 s 14(1) (as amended); the Public Health (Control of Disease) Act 1984 s 67(2), (3); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 144.

20 Licensing justices are a magistrates' court within the meaning of the Magistrates' Courts Act 1980 (*Jeffrey v Evans* [1964] 1 All ER 536, [1964] 1 WLR 505, DC), and for the purposes of the Public Health (Control of Disease) Act 1984 s 67(2), (3) (*R v East Riding of Yorkshire Quarter Sessions, ex p Newton* [1968] 1 QB 32 at 43, [1967] 3 All ER 118, CA) (both cases decided under earlier legislation).

21 See eg the Betting, Gaming and Lotteries Act 1963 ss 2, 9, Sch 1 paras 21, 23 (as amended); the Gaming Act 1968 s 11(1), Sch 2 paras 29-31 (as amended); the Licensing Act 1964 ss 21-23 (as amended).

22 See eg *ibid* s 50 (repealed) (appeals against certain decisions affecting clubs).

23 See *R v Hanson* (1821) 4 B & Ald 519 at 521 per Abbott CJ.

24 *R v London Keepers of the Peace and Justices* (1890) 25 QBD 357, DC; *R v Wright, ex p Bradford Corpn* (1907) 72 JP 23, DC; *Benson v Northern Ireland Road Transport Board* [1942] AC 520, [1942] 1 All ER 465, HL.

25 See generally JUDICIAL REVIEW vol 61 (2010) PARA 664.

26 A person who thinks himself aggrieved must have reasonable grounds for so thinking: *R v Bishop Wearmouth Inhabitants* (1834) 5 B & Ad 942.

27 A decision as to the meaning of words in one Act is not necessarily to be applied to another enacted with different intentions: *Sevenoaks UDC v Twynam* [1929] 2 KB 440 at 443, DC, per Lord Hewart CJ.

28 See the Criminal Appeal Act 1995 s 11; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1982; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 52. Such a reference is treated for all purposes as an appeal by the person under the Magistrates' Courts Act 1980 s 108(1), whether or not, in the case of a conviction, the person pleaded guilty: see the Criminal Appeal Act 1995 s 11(2), (3).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para

1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

628-630 Appeals from magistrates' courts and licensing justices ... Original civil jurisdiction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

628 Appeals from magistrates' courts and licensing justices

NOTE 13--Powers of Criminal Courts (Sentencing) Act 2000 ss 43, 48, 51, 56 repealed: Criminal Justice Act 2003 s 303(d)(i), Sch 37 Pt 7.

NOTE 16--Powers of Criminal Courts (Sentencing) Act 2000 s 75 amended: Criminal Justice and Immigration Act 2008 Sch 4 para 55, Sch 28 Pt 1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/ (ii) Jurisdiction of the Crown Court/629. Appeals other than from magistrates' courts.

629. Appeals other than from magistrates' courts.

In addition to the jurisdiction to hear appeals from magistrates' courts¹, the Crown Court has jurisdiction to entertain appeals from the decisions of local and other authorities in certain matters². For example, an appeal lies against certain decisions of a police authority with regard to police pensions³, and against decisions of a licensing authority in connection with film exhibitions⁴. Certain decisions of a chief officer of police in relation to firearms certificates and the registration of firearms dealers may also be the subject of an appeal to the Crown Court⁵.

1 See PARA 628 ante.

2 The Courts Act 1971 s 56, Sch 9 Pt I (as amended) includes references to a number of appeals against administrative decisions, as well as to appeals from magistrates' courts, in public Acts. In addition, similar rights of appeal lie to the Crown Court under local Acts.

3 See the Police Pensions Act 1976 s 3(3), Sch 1 para 4; and POLICE vol 36(1) (2007 Reissue) PARA 407 et seq.

4 See the Cinemas Act 1985 ss 1, 16; and LICENSING AND GAMBLING.

5 See the Firearms Act 1968 s 44 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 691.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the

Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

628-630 Appeals from magistrates' courts and licensing justices ... Original civil jurisdiction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

629-630 Appeals other than from magistrates' courts

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

629 Appeals other than from magistrates' courts

NOTE 2--1971 Act Sch 9 Pt 1 further amended: Statute Law (Repeals) Act 2004.

NOTE 4--Cinemas Act 1985 repealed: Licensing Act 2003 Sch 6 para 95.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/ (ii) Jurisdiction of the Crown Court/630. Original civil jurisdiction.

630. Original civil jurisdiction.

The original civil jurisdiction of the former courts of quarter sessions, although nowhere clearly defined, probably included, historically, those administrative functions which were transferred to local authorities by the Local Government Acts¹, as well as those functions of justices which were exercised, latterly, by magistrates' courts committees, or by other committees to which justices were appointed by quarter sessions². Special provision has been made for the exercise of powers of appointment to such committees since the establishment of the Crown Court³. The Courts Act 1971 transferred to the Crown Court the remaining original civil jurisdiction, which is now concerned with the repair of highways and certain matters concerning firearms certificates⁴.

1 A large part of the civil jurisdiction of quarter sessions which was of an administrative nature was transferred to county councils by the Local Government Act 1888 s 3 (now repealed). The remaining administrative functions of quarter sessions and clerks of the peace were transferred to local authorities by the Courts Act 1971 s 56(1), Sch 8 para 1.

2 In addition to magistrates' courts committees, the main bodies through which these functions were exercised, or to which quarter sessions appointed members, were probation and after care committees (Criminal Justice Act 1948 Sch 5 para 1(1)), boards of visitors of prisons (Prison Act 1952 s 6(1)), licensing compensation authorities (now abolished: see the Licensing (Alcohol Education and Research) Act 1981 ss 1-4, 11, Sch 2) and police committees (Police Act 1964 s 2(3)).

3 The Courts Act 1971 s 53, Sch 7 (repealed) amended the provisions referred to in note 2 supra consequent on the abolition of courts of quarter sessions.

4 The extent of this original civil jurisdiction is not clear, as it probably includes a number of provisions in local Acts which conferred an original jurisdiction on courts of quarter sessions. The jurisdiction, whatever its extent, was transferred to the Crown Court by *ibid* s 8 (repealed), s 56(1), Sch 1 (repealed), Sch 8 para 2. Further, Sch 9 Pt II (now largely repealed), which substituted references to the Crown Court for references to quarter sessions in public Acts, listed the following provisions as conferring original jurisdiction on the court: the Reservoirs (Safety Provisions) Act 1930 s 5(1) (repealed: the safety of reservoirs is now the responsibility of local authorities: see the Reservoirs Act 1975; and WATER AND WATERWAYS vol 100 (2009) PARA 280); the National Parks and Access to the Countryside Act 1949 s 31 (repealed: local authorities now have responsibility for the relevant matters under the Wildlife and Countryside Act 1981: see generally OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636 et seq); the Highways Act 1959 s 59(3) (repealed: see now the Highways Act 1980 s 56(2); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 300); and the Firearms Act 1968 s 21(6), (7), Sch 3 Pt I (as amended) (firearms: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 672).

UPDATE

601-671 The [Senior Courts] of England and Wales

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As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

628-630 Appeals from magistrates' courts and licensing justices ... Original civil jurisdiction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

629-630 Appeals other than from magistrates' courts

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

630 Original civil jurisdiction

NOTE 2--The boards appointed under the Prison Act 1952 s 6 (boards of visitors) are renamed as independent monitoring boards: Offender Management Act 2007 s 26(1).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/(iii) Distribution of Business/631. Directions as to distribution of business.

(iii) Distribution of Business

631. Directions as to distribution of business.

The Lord Chief Justice¹ has issued directions regulating the distribution of business in the Crown Court and the allocation of cases, or classes of case, to High Court judges², circuit judges and recorders³. For the purposes of trial, offences are placed in one of four classes. The most serious offences (Class 1)⁴ are generally reserved for trial by a High Court judge, although a case of murder, or soliciting, incitement, attempt or conspiracy to commit murder, may be released, by or on the authority of a presiding judge⁵, for trial by a deputy High Court judge, a circuit judge or a deputy circuit judge approved for the purpose by the Lord Chief Justice⁶. Offences in Class 2⁷ are to be tried by a High Court judge unless a particular case is released by or on the authority of a presiding judge for trial by a deputy High Court judge, circuit judge or a deputy circuit judge. A case of rape, or of a serious sexual offence of any class, may be released by a presiding judge for trial only by a circuit judge, deputy circuit judge or recorder approved for the purpose by the senior presiding judge with the concurrence of the Lord Chief Justice⁸. Offences in Class 3⁹ may be tried by a High Court judge or, in accordance with general or particular directions given by a presiding judge, by a circuit judge, a deputy circuit judge or a recorder who has attended a Judicial Studies Board continuation seminar¹⁰ and has been duly authorised by a presiding judge¹¹. When tried on indictment offences in Class 4¹² may be tried by a High Court judge, a deputy High Court judge, a circuit judge, a deputy circuit judge or a recorder; but such a case must not be listed for trial by a High Court judge except with the consent of that judge or of a presiding judge¹³.

Appeals from decisions of magistrates¹⁴ are heard by (1) a resident or designated judge; or (2) a circuit judge, nominated by the resident or designated judge, who regularly sits at the Crown Court centre; or (3) an experienced recorder specifically approved by the presiding judges for the purpose; or (4) where no circuit judge or recorder satisfying the above requirements is available and it is not practicable to obtain the approval of the presiding judges, by a circuit judge or recorder selected by the resident or designated judge to hear a specific case or cases¹⁵.

The Lord Chief Justice has also given directions concerning arrangements for pre-trial proceedings¹⁶.

Matters to be dealt with, for example matters in which a community rehabilitation order has been made or a suspended sentence passed, must, where possible, be listed before the judge who originally dealt with the matter, or, if not, before a judge of the same or higher status¹⁷.

1 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

2 As to the appointment and qualifications of High Court judges see PARA 515 et seq ante.

3 As to the appointment and qualifications of circuit judges and recorders see PARAS 522-528 ante.

4 Offences in Class 1 are: (1) treason; (2) murder; (3) genocide; (4) torture, hostage-taking and offences under the War Crimes Act 1991; (5) offences under the Official Secrets Acts; and (6) soliciting, incitement, attempt or conspiracy to commit any of the above offences: *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 1. As to such offences see further CRIMINAL LAW, EVIDENCE AND PROCEDURE.

5 As to presiding judges see PARA 504 ante.

6 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 1.

7 Offences in Class 2 are: (1) manslaughter; (2) infanticide; (3) child destruction; (4) illegal abortion; (5) rape; (6) sexual intercourse with a girl under the age of 13; (7) incest with a girl under the age of 13; (8) sedition; (9) an offence under the Geneva Conventions Act 1957 s 1 (as amended); (9) mutiny; (10) piracy; and (11) soliciting, incitement, attempt or conspiracy to commit any of the above offences: *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 1. As to such offences see further CRIMINAL LAW, EVIDENCE AND PROCEDURE.

8 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 2.

9 Offences in Class 3 are (1) all offences triable only on indictment other than those in Classes 1, 2 and 4; and (2) soliciting, incitement, attempt or conspiracy to commit any of the above offences: *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 1. As to such offences see further CRIMINAL LAW, EVIDENCE AND PROCEDURE.

10 As to the Judicial Studies Board and judicial training see PARAS 531-534 ante.

11 See *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 3.

12 Offences in Class 4 are wounding or causing grievous bodily harm with intent; robbery or assault with intent to rob; soliciting, incitement or attempt to commit any of the above offences; conspiracy at common law, or conspiracy to commit any offence other than those included in Classes 1, 2 and 3; and all offences which are triable either way: *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 1. As to such offences see further CRIMINAL LAW, EVIDENCE AND PROCEDURE.

13 See *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 4.

14 As to such appeals see PARA 628 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE; MAGISTRATES.

15 See *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 5.

16 With the exception of courts operating the plea and directions scheme established under practice rules issued by the Lord Chief Justice, the following arrangements for pre-trial proceedings apply: (1) applications or matters arising before trial (including those relating to bail) are to be listed where possible before the judge by whom the case is expected to be tried. Where a case is to be tried by a High Court judge who is not available, the application or matter must be listed before any other High Court judge then sitting at the Crown Court centre at which the matter has arisen; before a presiding judge; before the resident or designated judge for the centre; or, with the consent of the presiding judge, before a circuit judge nominated for the purpose; (2) in other cases, if the circuit judge or recorder who is expected to try the case is not available, the matter must be referred to the resident or designated judge or, if he is not available, to any judge or recorder then sitting at the centre: see *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 6. When a resident or designated judge is absent from his centre, the presiding judges may authorise another judge who sits regularly at the same centre to exercise his responsibility: para 10.

17 See *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 7.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

631 Directions as to distribution of business

TEXT AND NOTES--Replaced. As to classification and distribution of court business, see now *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May), which amends the *Practice Direction* [2002] 3 All ER 904 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE).

The Lord Chief Justice has issued directions regulating the distribution of business in the Crown Court and the allocation of cases, or classes of case, to High Court judges, circuit judges and recorders. For the purposes of trial, offences are placed in one of three classes. The most serious offences (Class 1)¹ may only be tried by (1) a High Court judge; or (2) a circuit judge or deputy High Court judge or deputy circuit judge, provided that, in all cases save attempted murder, such judge is authorised by the Lord Chief Justice to try murder cases, or in the case of attempted murder, to try murder or attempted murder, and the presiding judge has released the case for trial by such a judge². Offences in Class 2³ may be tried by (a) a High Court judge; (b) a circuit judge or deputy High Court judge or deputy circuit judge or recorder, provided that in all cases such a judge is authorised to try Class 2 cases by the Lord Chief Justice and the case has been assigned to the judge by or under the direction of either the presiding judge or resident judge in accordance with guidance given by the presiding judges⁴. Offences in Class 3⁵ may be tried by a High Court judge, or in accordance with guidance given by the presiding judges, a circuit judge, a deputy circuit judge or a recorder. A Class 3 offence must not be listed for trial by a High Court judge except with the consent of a presiding judge⁶. Appeals from decisions of magistrates are to be heard by (i) a resident judge, or (ii) a circuit judge, nominated by the resident judge, who regularly sits at the Crown Court centre, or (iii) an experienced recorder or deputy circuit judge specifically approved by or under the direction of the presiding judges, by a circuit judge, recorder or deputy circuit judge selected by the resident judge to hear a specific case or cases listed on a specific day⁷.

Committals following breach, such as a matter in which a community order has been made, or a suspended sentence passed, should, where possible, be listed before the judge who originally dealt with the matter, or, if not, before a judge of the same or higher level⁸.

1 Offences in Class 1 are: (1) misprision of treason and treason felony; (2) murder; (3) genocide; (4) torture, hostage-taking and offences under the War Crimes Act 1991; (5) an offence under the Official Secrets Acts; (6) manslaughter; (7) infanticide; (8) child destruction; (9) abortion (the Offences against the Person Act 1861 s 58); (10) sedition; (11) an offence under the Geneva Conventions Act 1957 s 1 (as amended); (12) mutiny; (13) piracy; (14) soliciting, incitement, attempt or conspiracy to commit any of the above offences: *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.1.

2 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.1.

3 Offences in Class 2 are: (1) rape; (2) sexual intercourse with a girl under 13; (3) incest with a girl under 13; (4) assault by penetration; (5) causing a person to engage in sexual activity, where penetration is involved; (6) rape of a child under 13; (7) assault of a child under 13 by penetration; (8) causing or inciting a child under 13 to engage in sexual activity, where penetration is involved; (9) paying for sexual services of a child where the child is under 13 and penetration is involved; (10) committing an offence with intent to commit a sexual offence, where the offence is kidnapping or false imprisonment; (11) soliciting, incitement, attempt or conspiracy to commit any of the above offences: *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.1.

4 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.2.

5 Offences in Class 3 are all other offences not listed in Classes 1 or 2: *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.1.

6 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.3.

7 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.4.

8 See *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.5.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/(iii) Distribution of Business/632. Selection of court location.

632. Selection of court location.

Subject to certain exceptions¹ a magistrates' court upon either (1) committing a person for trial under the Magistrates' Courts Act 1980²; (2) transferring a person under the relevant provisions of either the Criminal Justice Act 1987³ or the Criminal Justice Act 1991⁴; or (3) sending a person directly for trial, without any committal proceedings, under the Crime and Disorder Act 1998⁵ must, if the offence or any of the offences is included in Classes 1 or 2⁶, specify the most convenient location of the Crown Court⁷ where a High Court judge⁸, or, where the case is included in Class 1, where a circuit judge⁹ duly approved for that purpose by the Lord Chief Justice¹⁰ regularly sits¹¹. Where an offence is in Class 4¹², the magistrates' court must specify the most convenient location of the Crown Court¹³.

Where a presiding judge has directed that Class 2 offences within the specified categories¹⁴, or Class 3 offences¹⁵, may be committed, transferred or sent from a specified magistrates' court or courts to a specified location of the Crown Court at which a High Court judge does not regularly sit, the magistrates' court must specify that location¹⁶. In selecting the most convenient location of the Crown Court, the justices must have regard to the statutory considerations¹⁷ and to the location or locations of the Crown Court designated by a presiding judge as the location to which cases should normally be committed from their petty sessions area¹⁸. Where on one occasion a person is committed in respect of a number of offences, all the committals must be to the same location of the Crown Court and that location must be the one where a High Court judge regularly sits if such a location is appropriate for any of the offences¹⁹.

Where a community rehabilitation order, order for conditional discharge or a community punishment order has been made, or suspended sentence passed, and the offender is committed to be dealt with for the original offence or in respect of the suspended sentence²⁰, he must be committed in accordance with the following provisions²¹. If the order was made or the sentence was passed by the Crown Court, he must be committed to the location of the Crown Court where the order was made or suspended sentence was passed, unless it is inconvenient or impracticable to do so²². If he is not so committed and the order was made by a High Court judge, he must be committed to the most convenient location of the Crown Court where a High Court judge regularly sits²³. In all other cases where a person is committed for sentence or to be dealt with he must be committed to the most convenient location of the Crown Court²⁴. In selecting the most convenient location of the Crown Court the justices must have regard to the locations of the Crown Court designated by a presiding judge as the locations to which cases should normally be committed from their petty sessions area²⁵.

The hearing of an appeal or of proceedings under the civil jurisdiction of the Crown Court²⁶ must take place at the location of the Crown Court designated by a presiding judge as the appropriate location for such proceedings originating in the areas concerned²⁷.

An application for the removal of a driving disqualification must be made to the location of the Crown Court where the order of disqualification was made²⁸.

Directions may be given²⁹ for the transfer from one location of the Crown Court to another of appeals, proceedings on committal for sentence or to be dealt with or proceedings under the original civil jurisdiction of the Crown Court, where this appears desirable for expediting the hearing, or for the convenience of the parties³⁰. An application that a case be transferred from one circuit³¹ to another is not, however, to be granted unless the judge is satisfied either that the approval of the presiding judges and circuit administrator for each circuit has been obtained or that the case may be transferred under general arrangements approved by the presiding judges and circuit administrators³². For the just, speedy and economical disposal of the business of a circuit, presiding judges must, with the approval of the senior presiding judge, issue directions as to the need where appropriate to reserve a case for trial by a High Court judge or deputy High Court judge and as to the allocation of work between circuit judges, deputy circuit judges and recorders and where necessary the devolved responsibility of resident or designated judges for such allocation³³. General directions may be given, with the approval of the senior presiding judge, by the presiding judges of the South Eastern Circuit concerning the distribution and allocation of business of all classes at the Central Criminal Court³⁴.

1 Ie save as provided in *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 2(b) for certain offences in Class 2 and offences in Class 3(1): see the text and notes 14-16 infra. As to the classification of offences see PARA 631 ante.

2 Ie under the Magistrates' Courts Act 1980 s 6 (as amended): see MAGISTRATES vol 29(2) (Reissue) PARA 676.

3 Ie under the Criminal Justice Act 1987 s 4 (as amended) (serious fraud cases): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105.

4 Ie under the Criminal Justice Act 1991 s 53 (as amended) (transfer in certain cases involving offences against children): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1105.

5 Ie under the Crime and Disorder Act 1998 s 51: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1131 et seq.

6 As to Class 1 and Class 2 offences see PARA 631 notes 4, 7 ante.

7 As to the locations of the Crown Court see PARA 508 ante.

8 As to the appointment and qualifications of High Court judges see PARA 515 et seq ante.

9 As to the appointment and qualifications of circuit judges see PARAS 522-528 ante.

10 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

11 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 2(a). These courts will be identified by the presiding judges on each circuit: para 2(a). As to the presiding judges see PARA 504 ante.

12 As to Class 4 offences see PARA 631 note 12 ante.

13 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 2(a).

14 The specified categories are: rape; sexual intercourse with a girl under the age of 13; incest with a girl under the age of 13; and soliciting, incitement, attempt or conspiracy to commit any of the above offences: *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 2(b).

15 As to Class 3 offences see PARA 631 note 9 ante.

16 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 2(b).

17 le the considerations referred to in the Magistrates' Courts Act 1980 s 7 and the Crime and Disorder Act 1998 s 51(10): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1132; MAGISTRATES vol 29(2) (Reissue) PARA 676.

18 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 3.

19 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 4.

20 See PARA 627 ante; and MAGISTRATES.

21 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 5.

22 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 6.

23 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 7.

24 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 8.

25 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 9.

26 As to the civil jurisdiction of the Crown Court see PARA 630 ante.

27 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 10.

28 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 11.

29 le without prejudice to the provisions of the Supreme Court Act 1981 s 76 (as amended) (alteration of place of trial): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1228.

30 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Classification' para 12. Such directions may be given in a particular case by an officer of the Crown Court, or generally, in relation to a class or classes of case, by the presiding judge or a judge acting on his behalf: para 13. If dissatisfied with such directions given by an officer of the Crown Court, any party to the proceedings may apply to a judge of the Crown Court who may hear the application in chambers: para 14.

31 As to the circuits see PARA 503 ante.

32 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 9.

33 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 11. In such directions specific provision must be made for cases in the following categories: (1) cases where death or serious risk to life, or the infliction of grave injury are involved, including motoring cases of this category arising from dangerous driving and/or excess alcohol; (2) cases where loaded firearms are alleged to have been used; (3) cases of arson or criminal damage with intent to endanger life; (4) cases of defrauding government departments or local authorities or other public bodies of amounts in excess of £25,000; (5) offences under the Forgery and Counterfeiting Act 1981 where the amount of money or the value of the goods exceeds £10,000; (6) offences involving violence to a police officer which result in the officer being unfit for duty for more than 28 days; (7) any offence involving loss to any person or body of a sum in excess of £100,000; (8) cases where there is a risk of substantial political or racial feeling being excited by the offence or the trial; (9) cases which have given rise to widespread public concern; (10) cases of robbery or assault with intent to rob where gross violence was used, or serious injury was caused, or where the accused was armed with a dangerous weapon for the purpose of the robbery, or where the theft was intended to be from a bank, a building society or a post office; (11) cases involving the manufacture or distribution of substantial quantities of drugs; (12) cases the trial of which is likely to last more than 10 days; (13) cases involving the trial of more than five defendants; (14) cases in which the accused holds a senior public office, or is a member of a profession or other person carrying a special duty or responsibility to the public, including a police officer when acting as such; and (15) cases where a difficult issue of law is likely to be involved, or a prosecution for the offence is rare or novel: *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 11.

34 *Practice Note (Crown Court: allocation of court business)* [2001] 4 All ER 635 'Allocation of Business within the Crown Court' para 12. As to the Central Criminal Court see PARA 624 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

632 Selection of court location

TEXT AND NOTES--Replaced. As to classification and distribution of business, see now *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May), which amends the *Practice Direction* [2002] 3 All ER 904 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE).

A magistrates' court, on either (1) committing a person for trial under the Magistrates' Courts Act 1980¹; or (2) sending a person for trial under the Crime and Disorder Act 1998² must, if the offence or any of the offences is included in Class 1³, specify the most convenient location of the Crown Court where a High Court judge, or, where a circuit judge duly approved for that purpose by the Lord Chief Justice, regularly sits⁴. Where an offence is in Class 2⁵, the magistrates' court must specify the most convenient location of the Crown Court where a judge approved for that purpose by the Lord Chief Justice regularly sits⁶. Where an offence is in Class 3⁷, the magistrates' court must specify the most convenient location of the Crown Court⁸. Where a case is transferred under the Criminal Justice Act 1987⁹ or under the Criminal Justice Act 1991¹⁰, the authority will, in specifying the proposed place of trial in the notice of transfer, comply with these provisions¹¹.

In selecting the most convenient location of the Crown Court, the justices must have regard to the statutory considerations¹² and to the location or locations of the Crown Court designated by a presiding judge as the location to which cases should normally be committed from their court¹³. Where on one occasion a person is committed in respect of a number of offences, all the committals must be to the same location of the Crown Court and that location must be the one where a High Court judge regularly sits if such a location is appropriate for any of the offences¹⁴.

Where, in the Crown Court, a community order or an order for conditional discharge has been made, or suspended sentence passed, and the offender is subsequently found or alleged to be in breach before a magistrates' court which decides to commit the offender to the Crown Court he must be committed in accordance with the following provisions¹⁵. He must be committed to the location of the Crown Court where the order was made or the suspended sentence was passed, unless it is inconvenient, impracticable or inappropriate to do so in all the circumstances¹⁶. If, for whatever reason, he is not so committed and the order was made or sentence passed by a High Court judge, he must be committed to the most convenient location of the Crown Court where a High Court judge regularly sits¹⁷. In all other cases he must be committed to the most convenient location of the Crown Court¹⁸. In selecting the most convenient location of the Crown Court, the justices must have regard to the locations of the Crown Court designated by a presiding judge as the locations to which cases should normally be committed from their court¹⁹.

An application for the removal of a driving disqualification must be made to the location of the Crown Court where the order of disqualification was made²⁰.

Where a notice of transfer is served, in a case of serious or complex fraud, under the Criminal Justice Act 1987²¹, the proposed place of trial to be specified in the notice must be one of the Crown Court centres designated by the senior presiding judge²².

Where a notice of transfer is served, in a child witness case, under the Criminal Justice Act 1991²³, the proposed place of trial to be specified²⁴ will be a Crown Court centre which is equipped with live television link facilities²⁵.

Directions may be given²⁶ for the transfer from one location of the Crown Court to another of appeals and proceedings on committal for sentence or to be dealt with²⁷. An application that a case be transferred from one circuit to another is not, however, to be granted unless the judge is satisfied either that the approval of the presiding judges and regional director for each region or circuit has been obtained or that the case may be transferred under general arrangements approved by the presiding judges and regional directors²⁸. Such directions may be given in a particular case by an officer of the Crown Court, or generally, in a particular case by an officer of the Crown Court, or generally, in relation to a class or classes of case, by the presiding judge or a judge acting on his behalf²⁹. If dissatisfied with such directions given by an officer of the Crown Court, any party to the proceedings may apply to a judge of the Crown Court who may hear the application in chambers³⁰. For the just, speedy and economical disposal of the business of a circuit, the senior presiding judge or the presiding judges, with the approval of the senior presiding judge, must issue guidance to resident judges in relation to the allocation and management of the work at their court³¹. General directions may be given, with the approval of the senior presiding judge, by the presiding judges of the South Eastern Circuit concerning the distribution and allocation of business of all classes of case at the Central Criminal Court³².

1 Ie under the Magistrates' Courts Acts 1980 s 6 (as amended).

2 Ie under the Crime and Disorder Act 1998 s 51.

3 As to Class 1 offences, see PARA 631.

4 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.2. These courts will be identified by the presiding judges on each circuit: para III.21.2.

5 As to Class 2 offences, see PARA 631.

6 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.2. These courts will be identified by the presiding judges on each circuit: para III.21.2.

7 As to Class 3 offences, see PARA 631.

8 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.2.

9 Ie under the Criminal Justice Act 1987 s 4.

10 Ie under the Criminal Justice Act 1991 s 53.

11 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.2.

12 Ie the considerations referred to in the Magistrates' Courts Act 1980 s 7 and the Crime and Disorder Act 1998 s 51(10).

13 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.3.

- 14 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.4.
- 15 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.5.
- 16 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.6.
- 17 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.7.
- 18 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.8.
- 19 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.9.
- 20 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.6.
- 21 le under the Criminal Justice Act 1987 s 4.
- 22 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.10.
- 23 le under the Criminal Justice Act 1991 s 53.
- 24 le in accordance with *ibid* Sch 6 para 1(1).
- 25 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Classification' para III.21.11.
- 26 le without prejudice to the provisions of the Senior Courts Act 1981 s 76 (as amended) (alteration of place of trial).
- 27 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Transfer of Proceedings between Locations of the Crown Court' para IV.32.1.
- 28 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Transfer of Cases from one Circuit to Another' para IV.31.1.
- 29 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Transfer of Proceedings between Locations of the Crown Court' para IV.32.2.
- 30 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Transfer of Proceedings between Locations of the Crown Court' para IV.32.3.
- 31 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.8.
- 32 *Practice Direction (Crime: Classification and allocation of business)* [2005] All ER (D) 436 (May) 'Allocation of Business within the Crown Court' para IV.33.9.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(3) THE CROWN COURT/(iv) Judges/633. Judges in the Crown Court.

(iv) Judges

633. Judges in the Crown Court.

Any High Court judge¹, circuit judge or recorder², sitting alone or with justices of the peace³, may exercise the jurisdiction and powers of the Crown Court and, when exercising such

jurisdiction and powers, any such persons are judges of the Crown Court⁴. The Lord Chancellor⁵ may appoint deputy High Court judges⁶ and deputy circuit judges⁷ and additional recorders⁸ to facilitate the disposal of business in the Crown Court. A judge of the Court of Appeal, or former judge of the Court of Appeal, may sit and act as a judge of the Crown Court at the Lord Chancellor's request, as may a former High Court judge⁹.

- 1 As to the appointment and qualifications of High Court judges see PARA 515 et seq ante.
- 2 As to the appointment and qualifications of circuit judges and recorders see PARAS 522-528 ante.
- 3 As to justices of the peace sitting in the Crown Court see PARA 623 ante.
- 4 See the Supreme Court Act 1981 s 8(1); and PARA 623 ante.
- 5 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 6 See the Supreme Court Act 1981 s 9(4); and PARA 519 ante.
- 7 See the Courts Act 1971 s 24(1)(a) (as substituted); and PARA 525 ante.
- 8 See ibid s 24(1)(b) (as substituted); and PARA 526 ante.

UPDATE

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(4) THE COURT OF APPEAL/(i) Constitution and Divisions of the Court of Appeal/634. Divisions of the Court of Appeal.

(4) THE COURT OF APPEAL

(i) Constitution and Divisions of the Court of Appeal

634. Divisions of the Court of Appeal.

The Court of Appeal is a superior court of record¹ consisting of two Divisions, the Criminal Division and the Civil Division². The Lord Chief Justice³ is president of the Criminal Division and the Master of the Rolls⁴ is president of the Civil Division⁵. The Lord Chancellor⁶ may appoint one of the ordinary judges of the Court of Appeal⁷ as vice-president of both Divisions of that court,

or one of those judges as vice-president of the Criminal Division and another of them as vice-president of the Civil Division⁸.

Any number of courts of either Division of the Court of Appeal may sit at the same time⁹.

There is exercisable¹⁰ by the Court of Appeal all such jurisdiction (whether civil or criminal) as is conferred on it by the Supreme Court Act 1981 or any other Act and all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before 1 January 1982¹¹. The distribution of business between the Divisions is discussed below¹².

1 Supreme Court Act 1981 s 15(1).

2 Ibid s 3(1). The Court of Appeal was reconstituted on 1 October 1966, when the Criminal Appeal Act 1966 (repealed) came into operation, abolishing the former Court of Criminal Appeal and combining it and the Court of Appeal into a single appellate court with two Divisions.

3 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 Supreme Court Act 1981 s 3(2).

6 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 As to the judges of the Court of Appeal see PARA 637 post.

8 Supreme Court Act 1981 s 3(3). When sitting in a court of either Division of the Court of Appeal in which no ex-officio judge of the Court of Appeal is sitting, the vice-president (if any) of that Division presides: s 3(4).

9 Ibid s 3(5).

10 Ie subject to the provisions of the Supreme Court Act 1981: s 15(2).

11 Ibid s 15(2). 1 January 1982 is the commencement date of the Supreme Court Act 1981: see s 153(2).

12 See PARAS 639-640 post.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

634 Divisions of the Court of Appeal

TEXT AND NOTE 8--Supreme Court Act 1981 (now Senior Courts Act 1981) s 3(3) amended, s 3(6) added: Constitutional Reform Act 2005 Sch 4 para 116.

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635. Constitution of the Civil Division.

The Civil Division of the Court of Appeal is duly constituted for the purpose of exercising any of its jurisdiction if it consists of one or more judges¹. The Master of the Rolls² may, however, with the concurrence of the Lord Chancellor³, give (or vary or revoke) directions about the minimum number of judges of which a court must consist if it is to be duly constituted for the purpose of any description of proceedings⁴; and the Master of the Rolls, or any Lord Justice of Appeal⁵ designated by him, may, subject to any such directions, determine the number of judges of which a court is to consist for the purpose of any particular proceedings⁶. The Master of the Rolls may also give directions as to what is to happen in any particular case where one or more members of a court which has partly heard proceedings are unable to continue⁷.

Assessors⁸ may be called in to assist the Court of Appeal⁹ and scientific advisers¹⁰ may be called in to assist it in proceedings on appeal from the Patents Court¹¹.

Where an appeal has been heard by a court consisting of an even number of judges and the members of the court are equally divided, then on the application of any party to the appeal the case must be reargued before and determined by an uneven number of judges not less than three, before any appeal to the House of Lords¹².

No judge may sit as a member of the Civil Division of the Court of Appeal on the hearing of, or may determine any application in proceedings incidental or preliminary to, an appeal from a judgment or order made in any case by himself or by any court of which he was a member¹³.

1 Supreme Court Act 1981 s 54(1), (2) (s 54(2)-(4) substituted, and s 54(4A) added, by the Access to Justice Act 1999 s 59). Where counsel believe that a case raises points of real difficulty they should request a hearing before a court of three: see *Coldunell Ltd v Gallon* [1986] 1 All ER 429 at 441, CA, per Oliver LJ. The request should be directed in the first instance to the Head of the Civil Appeals Office; as to his power to act in a judicial capacity see PARA 670 post.

2 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Supreme Court Act 1981 s 54(3) (as substituted: see note 1 supra).

5 As to the appointment and qualifications of Lords Justices of Appeal see PARA 515 et seq ante.

6 Supreme Court Act 1981 s 54(4) (as substituted: see note 1 supra).

7 Ibid s 54(4A) (as added: see note 1 supra).

8 As to assessors in the High Court see ibid s 70(1), (2); and CIVIL PROCEDURE vol 12 (2009) PARA 1133.

9 See ibid s 54(8).

10 As to scientific advisers in the High Court see ibid s 70(3), (4); and CIVIL PROCEDURE vol 12 (2009) PARA 1133.

11 See ibid s 54(9).

12 Ibid s 54(5). As to appeals to the House of Lords see PARA 359 et seq ante.

13 Ibid s 56(1).

UPDATE**601-671 The [Senior Courts] of England and Wales**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

635 Constitution of the Civil Division

TEXT AND NOTE 4--The Lord Chancellor's function under the 1981 Act s 54(3) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 12--In 1981 Act s 54(5) for 'House of Lords' read 'Supreme Court': 2005 Act Sch 9 para 36(5) (in force 1 October 2009: SI 2009/1604).

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636. Constitution of the Criminal Division.

The Criminal Division of the Court of Appeal is duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of judges not less than three¹, provided that it does not include more than one circuit judge acting² as a judge of the court³. Where part of any proceedings before a court has been heard by an uneven number of judges greater than three and one or more members of the court are unable to continue, the court remains duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than three⁴.

If it consists of two judges, then so long as they are not both circuit judges acting as judges of the court⁵, the Criminal Division is duly constituted for every purpose except the following:

- 242 (1) determining an appeal against conviction⁶, or against a verdict of not guilty by reason of insanity⁷, or against a finding of a jury under the Criminal Procedure (Insanity) Act 1964⁸ that a person is under a disability;
- 243 (2) reviewing sentencing under Part IV of the Criminal Justice Act 1988⁹;
- 244 (3) determining an application for leave to appeal to the House of Lords¹⁰; and
- 245 (4) refusing an application for leave to appeal to the Criminal Division against conviction or any such verdict or finding as is mentioned in head (1) above, other than an application which has been refused by a single judge¹¹.

Where an appeal has been heard by a court consisting of an even number of judges and the members of the court are equally divided, the case must be reargued before and determined by an uneven number of judges not less than three¹².

No judge may sit as a member of the Criminal Division of the Court of Appeal on the hearing of, or may determine any application in proceedings incidental or preliminary to, an appeal against a conviction before himself or a court of which he was a member or against a sentence passed by himself or such a court¹³. Furthermore, no circuit judge must act in the Criminal Division as a judge of that court¹⁴ on the hearing of, or determine any application in proceedings incidental or preliminary to, an appeal against a conviction before, or a sentence passed by, a judge of the High Court¹⁵. The appeals¹⁶ or classes of appeals suitable for allocation to a court of the Criminal Division in which a circuit judge is acting¹⁷ are to be determined in accordance with directions given by or on behalf of the Lord Chief Justice¹⁸ with the concurrence of the Lord Chancellor¹⁹.

Except where the judge presiding over the court states that in his opinion the question is one of law on which it is convenient that separate judgments should be pronounced by the members of the court, any judgment of a court of the Criminal Division on any question must be pronounced by the judge presiding over the court or by such other member of the court as he directs and, except as set out above, no judgment is to be separately pronounced on any question by any member of the court²⁰.

A review of the criminal courts of England and Wales was undertaken by Lord Justice Auld and reported to the government in 2001. Among the recommendations contained in the report was that the Court of Appeal should be reconstituted and its procedures improved²¹. These recommendations have not been implemented²².

1 Supreme Court Act 1981 s 55(1), (2) (s 55(2) amended, and s 55(6) added, by the Criminal Justice and Public Order Act 1994 s 52(6), (7)). In *R v Newsome* [1970] 2 QB 711, [1970] 3 All ER 455, CA, a court of five judges held that such a court can depart from an earlier view expressed by a court of three judges, especially where the earlier view is very recent and where the court did not have the opportunity of argument on both sides. A court of the Criminal Division is not bound by a decision of the Civil Division: nor does the doctrine of stare decisis (precedent) apply in its full vigour in the Criminal Division: *R v Newsome* supra; *R v Gould* [1968] 2 QB 65, [1968] 1 All ER 849, CA.

2 Ie acting under the Supreme Court Act 1981 s 9 (as amended): see PARA 519 ante.

3 Ibid s 55(6) (as added: see note 1 supra).

4 Ibid s 55(3).

5 See notes 2-3 supra.

6 As to appeals against conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq.

7 As to such verdicts see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1838.

8 Ie under the Criminal Procedure (Insanity) Act 1964 s 4 (as substituted) (unfitness to plead etc): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1839.

9 Ie under the Criminal Justice Act 1988 Pt IV (ss 35-36) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 55 et seq.

10 As to appeals to the House of Lords see PARA 362 et seq ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1966 et seq.

11 Supreme Court Act 1981 s 55(4) (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 80).

12 Supreme Court Act 1981 s 55(5).

13 Ibid s 56(2).

14 See note 2 *supra*.

15 Supreme Court Act 1981 s 56A (ss 56A, 56B added by the Criminal Justice and Public Order Act 1994 s 52(6), (8), (9)).

16 For these purposes, 'appeal' includes the hearing of, or any application in proceedings incidental or preliminary to, an appeal: Supreme Court Act 1981 s 56B(2) (as added: see note 15 *supra*).

17 See note 2 *supra*.

18 As to the Lord Chief Justice see PARA 515 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

19 Supreme Court Act 1981 s 56B(1) (as added: see note 15 *supra*). As to the Lord Chancellor see PARA 501 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*.

20 Supreme Court Act 1981 s 59.

21 See *A Review of the Criminal Courts of England and Wales* (2001) Ch 2 para 20. The report also recommended that there should be the same tests for appeal against conviction and sentence at all levels of appeal: see Ch 2 para 18. At the date at which this title states the law, the full text of the report was available on the Lord Chancellor's Department website at www.lcd.gov.uk.

22 The period for public comment on the proposals ended on 31 January 2002 and was to be followed by the publication of a White Paper.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

636 Constitution of the Criminal Division

NOTE 1--Where the constitution of the court is reduced to less than three judges before it has given judgment, the remaining two judges lack jurisdiction to determine the appeal: *R v Coates*; *R v Terry* [2004] EWCA Crim 2253, [2004] 4 All ER 1150.

NOTE 6--An appeal is not determined when the judges hand the judgment down in court, but when the draft judgment is authorised to be released to counsel: *R v Steele*; *R v Corry*; *R v Whomes* [2006] EWCA Crim 2000, [2007] 1 WLR 222.

NOTE 11--Supreme Court Act 1981 s 55(4) (now Senior Courts Act 1981 s 55(4)) amended: Domestic Violence, Crime and Victims Act 2004 Sch 10 para 14, Sch 11.

TEXT AND NOTE 15--1981 Act s 56A repealed: Courts Act 2003 s 67, Sch 10.

TEXT AND NOTE 19--1981 Act s 56B(1) amended: Constitutional Reform Act 2005 Sch 4 para 127.

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637. Judges of the Court of Appeal.

The Court of Appeal¹ consists of the following ex-officio judges and not more than 35 ordinary judges²:

- 246 (1) the Lord Chancellor³;
- 247 (2) any person who has been Lord Chancellor;
- 248 (3) any Lord of Appeal in Ordinary⁴ ('Law Lord') who at the date of his appointment was, or was qualified for appointment as, an ordinary judge of the Court of Appeal or held an office within heads (4) to (7) below;
- 249 (4) the Lord Chief Justice, who is president of the Criminal Division⁵;
- 250 (5) the Master of the Rolls, who is president of the Civil Division⁶;
- 251 (6) the President of the Family Division⁷; and

252 (7) the Vice-Chancellor⁸.

A former Lord Chancellor or a Law Lord is not, however, required to sit and act as a judge of the Court of Appeal unless he consents to do so at the Lord Chancellor's request⁹.

Her Majesty may by Order in Council from time to time amend the relevant provision¹⁰ so as to increase or further increase the maximum number of ordinary judges of the Court of Appeal¹¹; but no recommendation may be made to Her Majesty in Council to make such an Order unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament¹².

The Court of Appeal is taken to be duly constituted notwithstanding any vacancy in the office of Lord Chancellor, Lord Chief Justice, Master of the Rolls, President of the Family Division or Vice-Chancellor¹³.

The ordinary judges of the Court of Appeal (including the vice-president, if any, of either Division)¹⁴ are styled 'Lords Justices of Appeal'¹⁵. Their appointment, qualifications, tenure, salaries and retirement and pensions arrangements have already been discussed¹⁶.

1 As to the Divisions of the Court of Appeal, and the constitution of the Divisions, see PARAS 634-636 ante.

2 Supreme Court Act 1981 s 2(1), (2) (s 2(1) amended by the Maximum Number of Judges Order 1996, SI 1996/1142). In respect of any period during which he is serving as a judge of the European Court of Human Rights, an appeal court judge does not count for the purposes of the Supreme Court Act 1981 s 2(1) (as so amended): see the Human Rights Act 1998 s 18(4)(a); and PARA 521 ante. The Lord Chancellor may appoint one of the ordinary judges of the Court of Appeal as vice-president of the Queen's Bench Division and any person so appointed holds that office in accordance with the terms of his appointment: see the Access to Justice Act 1999 s 69(1); and PARA 619 ante.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 As to the Lords of Appeal in Ordinary see PARA 369 ante.

5 See the Supreme Court Act 1981 s 3(2). As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

6 See *ibid* s 3(2). As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

7 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

8 Supreme Court Act 1981 s 2(2). As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

9 *Ibid* s 2(2).

10 He may amend *ibid* s 2(1) (as amended): see the text and notes 1-2 *supra*.

11 *Ibid* s 2(4).

12 *Ibid* s 2(5). The current order made under this power is the Maximum Number of Judges Order 1996, SI 1996/1142: see note 2 *supra*.

13 Supreme Court Act 1981 s 2(6).

14 See *ibid* s 3(3); and PARA 634 ante.

15 *Ibid* s 2(3). A Lord Justice of Appeal is barred from legal practice: Courts and Legal Services Act 1990 s 75, Sch 11. He may hold office in a relevant international court without being required to relinquish his United Kingdom judicial office: see the Access to Justice Act 1999 s 68(1), (2); and PARA 521 ante.

16 See PARAS 515-521, 537 et seq ante.

UPDATE**601-671 The [Senior Courts] of England and Wales**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

637 Judges of the Court of Appeal

TEXT AND NOTES--Supreme Court Act 1981 s 2 (now Senior Courts Act 1981 s 2) further amended: Constitutional Reform Act 2005 Sch 4 para 115, Sch 18 Pt 2.

TEXT AND NOTE 2--Maximum number of ordinary judges is now 38: 1981 Act s 2(1) (amended by SI 2002/2837, SI 2008/1777).

NOTE 2--1999 Act s 69(1) amended, s 69(1A) added: 2005 Act Sch 4 para 282.

TEXT AND NOTES 8, 9--1981 Act s 2(2) amended: 2005 Act Sch 17 para 22(2) (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTE 15--An ordinary judge of the Court of Appeal (including the vice-president, if any, of either division) is styled 'Lord Justice of Appeal' or 'Lady Justice of Appeal': 1981 Act s 2(3) (substituted by Courts Act 2003 s 63).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(4) THE COURT OF APPEAL/(i) Constitution and Divisions of the Court of Appeal/638. Additional judges.

638. Additional judges.

The Lord Chancellor¹ may request the attendance at any time of any judge or ex-judge of the High Court², any ex-judge of the Court of Appeal, or any circuit judge³, to sit as an additional judge at the sittings of the Court of Appeal⁴. In respect of sittings of the Criminal Division of the Court of Appeal⁵, the attendance of a High Court judge or circuit judge may be requested by the Lord Chief Justice⁶ or, in his absence, by the Master of the Rolls⁷. Any High Court judge or circuit judge whose attendance is so requested must attend accordingly, but the attendance of an ex-judge of the High Court or of the Court of Appeal is not compulsory⁸. A circuit judge whose attendance is so requested may not exercise certain powers of a single judge of the Criminal Division⁹ but, subject to that, such additional judges while so acting are treated for all purposes, and may perform any of the functions of, a judge of the Court of Appeal¹⁰.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the appointment and qualifications of High Court judges see PARA 515 et seq ante.

- 3 As to the appointment and qualifications of circuit judges see PARAS 522-524 ante.
- 4 See the Supreme Court Act 1981 s 9(1), (1A), (2) (as amended); and PARA 519 ante.
- 5 As to the Criminal Division of the Court of Appeal see PARA 636 ante.
- 6 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.
- 7 See note 4 supra; and as to circuit judges sitting as judges of the Criminal Division see also PARA 636 ante. No request may be made to a circuit judge to act as a judge of a court in the Criminal Division unless he is approved for the time being by the Lord Chancellor for the purpose of so acting: see the Supreme Court Act 1981 s 9(2) (as amended); and PARA 519 ante. As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.
- 8 See the Supreme Court Act 1981 s 9(3); and PARA 519 ante.
- 9 See *ibid* s 9(6A) (as added); and PARA 519 ante.
- 10 See *ibid* s 9(5) (as amended); and PARA 519 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(4) THE COURT OF APPEAL/(ii) Jurisdiction exercised by the Divisions of the Court of Appeal/639. Jurisdiction exercised by the Civil Division.

(ii) Jurisdiction exercised by the Divisions of the Court of Appeal

639. Jurisdiction exercised by the Civil Division.

Rules of court¹ may provide for the distribution of business in the Court of Appeal between the Civil and Criminal Divisions² but, subject to any such rules, the Civil Division is to exercise the whole of the jurisdiction of the court, except such as is exercisable³ by the Criminal Division⁴.

The jurisdiction of the Civil Division is entirely appellate⁵ and is discussed in detail elsewhere in this work⁶. For all purposes of or incidental to the hearing and determination of any appeal to the Civil Division and the amendment, execution and enforcement of any judgment or order made on such an appeal, the Court of Appeal has all the authority and jurisdiction of the court or tribunal from which the appeal was brought⁷. Any provision in the Supreme Court Act 1981 or any other Act which authorises or requires the taking of any steps for the execution or enforcement of a judgment or order of the High Court applies in relation to a judgment or order of the Civil Division of the Court of Appeal as it applies in relation to a judgment or order of the High Court⁸.

Particular provision is made in the Supreme Court Act 1981 regarding appeals from the High Court⁹, applications for a new trial¹⁰, restrictions on appeals¹¹, the staying of proceedings¹², the power to award damages as well as, or in substitution for, an injunction or specific performance¹³, the determination of costs¹⁴, the calling into question of incidental decisions in the Civil Division¹⁵ and the treatment of decisions and orders as interim or final¹⁶. Where the Court of Appeal has power to order a new trial on the ground that the damages awarded by a jury are excessive or inadequate, rules of court may instead provide for the court to substitute its own award for that of the jury¹⁷.

The Civil Division is bound by its own decisions except where there are conflicting decisions of the Court of Appeal, where the earlier decision or decisions cannot stand with a decision of the House of Lords or where the court is satisfied that the previous decision was given per incuriam¹⁸. It may, however, in exceptional circumstances reopen an appeal which it has already determined¹⁹.

1 As to rules of court see PARA 575 et seq ante. The procedure in the Civil Division of the Court of Appeal is now governed by the Civil Procedure Rules (see CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq) and that in the Criminal Division by the Criminal Appeal Rules 1968, SI 1968/1262 (as amended); the Criminal Appeal (Reference of Points of Law) Rules 1973, SI 1973/1114; and the Criminal Appeal (Reviews of Sentencing) Rules 1989, SI 1989/19 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq).

2 Supreme Court Act 1981 s 53(1).

3 As to the jurisdiction of the Criminal Division see PARA 640 post.

4 Supreme Court Act 1981 s 53(3).

5 See eg *Re Claims Direct Test Cases* [2002] EWCA Civ 428, [2002] All ER (D) 286 (Mar), (2002) Times, 4 April (not appropriate for the Court of Appeal to decide, or express an opinion, as to any of the substantive issues before the costs judge, such as whether the sums paid for the Claims Direct after-the-event policy constituted premiums within the meaning of the Access to Justice Act 1999 s 29 (see CIVIL PROCEDURE vol 12 (2009) PARA 1830) and how the reasonableness of the premiums was to be determined).

6 See CIVIL PROCEDURE vol 12 (2009) PARAS 1658, 1683, 1686, 1692, 1702 et seq.

7 Supreme Court Act 1981 s 15(3).

8 Ibid s 15(4).

9 Subject as otherwise provided by the Supreme Court Act 1981 or any other Act (and in particular subject to the provision in the Administration of Justice Act 1969 s 13(2)(a) excluding appeals to the Court of Appeal in cases where leave to appeal from the High Court directly to the House of Lords is granted under Pt II (ss 12-16) (as amended) (see PARA 379 ante; and CIVIL PROCEDURE vol 12 (2009) PARA 1718)), or as provided by any order made by the Lord Chancellor under the Access to Justice Act 1999 s 56(1) (see CIVIL PROCEDURE vol 12 (2009) PARA 1658), the Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order of the High Court, except when acting as a prize court: see the Supreme Court Act 1981 s 16(1), (2) (amended by the Access to Justice Act 1999 (Destination of Appeals) Order 2000, SI 2000/1071, art 7).

10 Where any cause or matter, or any issue in any cause or matter, has been tried in the High Court, any application for a new trial thereof, or to set aside a verdict, finding or judgment therein, must be heard and determined by the Court of Appeal except where rules of court made in pursuance of the Supreme Court Act 1981 s 17(2) provide otherwise: s 17(1). As regards cases where the trial was by a judge alone and no error of the court at the trial is alleged, or any prescribed class of such cases, rules of court may, however, provide that any such application as is mentioned in s 17(1) is to be heard and determined by the High Court: s 17(2). Nothing in s 17 alters the practice in bankruptcy: s 17(3).

11 See ibid s 18 (as amended) ; and CIVIL PROCEDURE vol 12 (2009) PARA 1692.

12 See ibid s 49(3); and CIVIL PROCEDURE vol 11 (2009) PARA 533.

13 See ibid s 50; and DAMAGES vol 12(1) (Reissue) PARA 1121 et seq.

14 See ibid s 51 (as substituted); and CIVIL PROCEDURE vol 12 (2009) PARA 1732.

- 15 See *ibid* s 58 (as substituted); and CIVIL PROCEDURE vol 12 (2009) PARA 1711.
- 16 See *ibid* s 60; and CIVIL PROCEDURE vol 12 (2009) PARA 1705.
- 17 See the Courts and Legal Services Act 1990 s 8; and DAMAGES vol 12(1) (Reissue) PARA 1162.
- 18 See CIVIL PROCEDURE vol 12 (2009) PARA 1701.
- 19 See *Taylor v Lawrence* [2002] EWCA Civ 90, [2002] 2 All ER 353, [2002] All ER (D) 28 (Feb).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

639 Jurisdiction exercised by the Civil Division

NOTE 1--SI 1968/1262, SI 1973/1114, SI 1989/19 replaced by Criminal Procedure Rules 2005, SI 2005/384.

NOTE 3--*Claims Direct*, cited, reported at [2002] EWCA Civ 428, [2002] PIQR Q11.

NOTE 9--A decision of a court of first instance on a preliminary issue is a 'judgment' or 'order' within the meaning of the 1981 Act s 16(1): *Cie Noga d'Importation et d'Exportation SA v Australia and New Zealand Banking Group Ltd; Cie Noga d'Importation et d'Exportation SA v Government of the Russian Federation* [2002] EWCA Civ 1142, [2003] 1 WLR 307.

1981 Act s 16(1) further amended: Constitutional Reform Act 2005 Sch 9 para 36(3) (in force 1 October 2009: SI 2009/1604).

NOTE 19--For the procedure for reopening an appeal already determined, see now CPR 52.17; and CIVIL PROCEDURE vol 12 (2009) PARA 1674.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(4) THE COURT OF APPEAL/(ii) Jurisdiction exercised by the Divisions of the Court of Appeal/640. Jurisdiction exercised by the Criminal Division.

640. Jurisdiction exercised by the Criminal Division.

Rules of court¹ may provide for the distribution of business in the Court of Appeal between the Civil and Criminal Divisions² but, subject to any such rules, the Criminal Division exercises:

- 253 (1) all jurisdiction of the Court of Appeal under Parts I and II of the Criminal Appeal Act 1968³;

- 254 (2) the jurisdiction of the Court of Appeal under the Administration of Justice Act 1960⁴ in cases of contempt of court in relation to appeals from orders and decisions of the Crown Court;
- 255 (3) all other jurisdiction expressly conferred on that Division by the Supreme Court Act 1981 or any other Act; and
- 256 (4) the jurisdiction to order the issue of writs of venire de novo (ordering the trial of an offender where the court rules that his purported trial has been a nullity)⁵.

Where any class of proceedings in the Court of Appeal is by any statutory provision assigned to the Criminal Division of that court, rules of court may provide for any enactment relating to appeals to the Court of Appeal under Part I of the Criminal Appeal Act 1968, or any matter connected with or arising out of such appeals, to apply in relation to proceedings of that class or, as the case may be, to any corresponding matter connected with or arising out of such proceedings, as it applies in relation to such appeals or, as the case may be, to the relevant matter, with or without prescribed modifications in either case⁶.

The jurisdiction of the Criminal Division, which is appellate, is discussed in detail elsewhere in this work⁷. In particular, the Criminal Division hears appeals against convictions on indictment in the Crown Court, and has power to allow such an appeal if the court thinks that the conviction is unsafe, in which case it must quash the conviction, and to dismiss such an appeal in any other case⁸. In certain circumstances it may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of another offence, and pass an appropriate sentence⁹. Where, on an appeal against conviction on an indictment containing two or more counts, the court allows the appeal in respect of part only of the indictment, it may substitute an appropriate sentence for the remaining counts¹⁰. In a case where the jury has found a special verdict and the court considers that the court of trial has arrived at a wrong conclusion on the effect of the jury's verdict, the court has power to order a different conclusion to be recorded and to substitute an appropriate sentence¹¹. It may also substitute, for a verdict of guilty, a verdict of not guilty by reason of insanity, a finding of disability or other appropriate finding¹². Where the Criminal Division allows an appeal against conviction and it appears to the court that the interests of justice so require, it may order the appellant to be retried¹³.

The Criminal Division also hears appeals against sentence¹⁴, appeals against verdicts of not guilty by reason of insanity¹⁵ and against findings of unfitness to stand trial¹⁶. It may grant bail pending the determination of any appeal, or revoke bail granted by the Crown Court¹⁷.

Rights of appeal to the Criminal Division of the Court of Appeal from orders or decisions of the Crown Court in the exercise of jurisdiction to punish for contempt of court are exercisable in accordance with rules of court¹⁸.

On an appeal against conviction the Criminal Division may direct the Criminal Cases Review Commission to investigate and report to the court on any matter if it appears to the court that the matter is relevant to the determination of the case and ought, if possible, to be resolved before the case is determined, that an investigation of the matter by the Commission is likely to result in the court being able to resolve it and that the matter cannot be resolved by the court without an investigation by the Commission¹⁹.

Certain powers relating to appeals against conviction or sentence are exercisable by a single judge²⁰, other than a circuit judge acting as an additional judge of the court²¹; and certain other such powers are exercisable by the Registrar of Criminal Appeals²².

The Criminal Division also has jurisdiction to hear appeals against certain rulings²³ of a Crown Court judge at a preparatory hearing²⁴.

Convictions, sentences, verdicts and findings in cases on indictment may be referred to the Criminal Division by the Criminal Cases Review Commission²⁵. Such a reference is treated as an appeal to the court²⁶.

The Attorney General may refer a case to the Criminal Division for review if he considers that the sentence passed by the Crown Court has been unduly lenient²⁷. On such a reference the court may quash the sentence and substitute its own appropriate sentence²⁸. He may also, where a person has been acquitted after a trial on indictment, refer a point of law which has arisen in the case to the Criminal Division for its opinion²⁹.

The right of appeal from the Criminal Division to the House of Lords and the restrictions on that right have already been discussed³⁰. The court may grant bail to an appellant pending the determination of such an appeal³¹ or may order a person's detention, or direct that he may only be released on bail where, immediately after a decision of the Criminal Division from which an appeal lies to the House of Lords, the prosecutor is granted or gives notice that he intends to apply for leave to appeal and the person would otherwise have been released³².

The Criminal Division is less rigidly bound by its own decisions than is the Civil Division³³.

1 As to rules of court see PARA 575 et seq ante. The procedure in the Civil Division of the Court of Appeal is now governed by the Civil Procedure Rules (see CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq) and that in the Criminal Division by the Criminal Appeal Rules 1968, SI 1968/1262 (as amended); the Criminal Appeal (Reference of Points of Law) Rules 1973, SI 1973/1114; and the Criminal Appeal (Reviews of Sentencing) Rules 1989, SI 1989/19 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq).

2 Supreme Court Act 1981 s 53(1).

3 See the Criminal Appeal Act 1968 Pt I (ss 1-32) (as amended), Pt II (ss 33-44) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq.

4 See under the Administration of Justice Act 1960 s 13 (as amended): see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 513.

5 Supreme Court Act 1981 s 53(2). As to venire de novo see *R v Rose* [1982] 2 All ER 731, HL; *R v O'Donnell* [1996] 1 Cr App Rep 286, CA; *R v Booth*, *R v Molland*, *R v Wood* [1999] 1 Cr App Rep 457, CA; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1895.

6 Supreme Court Act 1981 s 53(4).

7 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq.

8 See the Criminal Appeal Act 1968 s 2(1), (2) (s 2(1) substituted by the Criminal Appeal Act 1995 s 2(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq.

9 See the Criminal Appeal Act 1968 s 3; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 46.

10 See *ibid* s 4; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1884.

11 See *ibid* s 5 (amended by the Criminal Appeal Act 1995 s 29, Sch 2 para 4(2)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1880.

12 See the Criminal Appeal Act 1968 s 6 (substituted by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 s 4(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1883 et seq.

13 See the Criminal Appeal Act 1968 ss 7, 8 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1896 et seq.

14 See *ibid* ss 9-11 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 46 et seq.

15 See *ibid* ss 12-14A (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1838.

16 See *ibid* ss 15, 16 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1839.

17 See *ibid* s 19 (as substituted and amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1193 et seq.

18 See *ibid* s 18A (added by the Criminal Justice Act 1988 s 170(1), Sch 15 paras 20, 25); the Administration of Justice Act 1960 s 13 (as amended); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 513.

19 See the Criminal Appeal Act 1968 s 23A (added by the Criminal Appeal Act 1995 s 5(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1869.

20 See the Criminal Appeal Act 1968 ss 31, 44 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1854.

21 See the Supreme Court Act 1981 s 9(6A) (as added); and PARA 519 ante.

22 See the Criminal Appeal Act 1968 s 31A (added by the Criminal Appeal Act 1995 s 6); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1851. The powers referred to in the text are powers to extend the time within which notice of appeal or of application for leave to appeal may be given, to order a witness to attend for examination; and (subject to certain conditions) to vary the conditions of bail granted to an appellant by the Court of Appeal or the Crown Court: see the Criminal Appeal Act 1968 s 31A(2) (as so added). As to the registrar see PARA 657 post.

23 *le* against any ruling under the Criminal Justice Act 1987 s 9 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1253; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1921) or under the Criminal Procedure and Investigations Act 1996 s 31 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1253).

24 See the Criminal Justice Act 1987 s 9(12); the Criminal Procedure and Investigations Act 1996 s 35(4); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1922.

25 See the Criminal Appeal Act 1995 s 9; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1963.

26 See *ibid* s 9(2), (3), (5), (6).

27 See the Criminal Justice Act 1988 s 35 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 55 et seq.

28 See *ibid* s 36 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 55 et seq.

29 See the Criminal Justice Act 1972 s 36 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1950.

30 See PARA 362 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1966 et seq.

31 See the Criminal Appeal Act 1968 s 36 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1198.

32 See *ibid* s 37 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1198.

33 See CIVIL PROCEDURE vol 11 (2009) PARA 96.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

640 Jurisdiction exercised by the Criminal Division

NOTE 1--SI 1968/1262, SI 1973/1114, SI 1989/19 replaced by Criminal Procedure Rules 2005, SI 2005/384.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(5) SUPREME COURT OFFICES/641. The Central Office and other court offices located at the Royal Courts of Justice.

(5) SUPREME COURT OFFICES

641. The Central Office and other court offices located at the Royal Courts of Justice.

In 1879, as part of an extensive reorganisation of the Supreme Court, the Central Office was established¹. The Central Office performs such business as the Lord Chancellor may direct². The relevant practice direction provides for the division of the Central Office into departments and for the distribution of Central Office business among such departments in such manner as is set out in *The Queen's Bench Guide*³. The Central Office comprises the following departments:

- 257 (1) the Action Department, which deals with the issue of claims, responses to claims, admissions, undefended and summary judgments, enforcement, drawing up certain orders, public searches, provision of copies of court documents, enrolment of deeds, submission of references to the European Court of Justice and registration of foreign judgments;
- 258 (2) the Masters' Secretary's Department⁴, which covers three discrete areas of work:
 - 11
 - 18. (a) the Masters' Support Unit which provides support (i) to the masters, including assisting with case-management, and (ii) to the senior master;
 - 19. (b) Foreign Process; and
 - 20. (c) Investment of Children's Funds;
 - 12
- 259 (3) the Queen's Bench Associates' Department. The Queen's Bench Associates sit in court with the judges during trials and certain interim hearings. The chief associate manages the Queen's Bench Associates and also provides support to the senior master as the Queen's Remembrancer⁵ and as the prescribed officer for election petitions. The associates draw up the orders made in court at trial and those interim orders that the parties do not wish to draw up themselves;
- 260 (4) the Clerk of the Lists, who lists all trials and matters before the judges;
- 261 (5) the Registry of the Technology and Construction Court ('TCC')⁶;
- 262 (6) the Registry of the Admiralty and Commercial Courts⁷.

It is the duty of one of the masters of the Queen's Bench Division to act as Practice Master each day and to be present at the Central Office in order to superintend the business performed there and to give any directions which may be required on questions of practice and procedure⁸.

With the exception of the TCC Registry⁹, all these departments are located at the Royal Courts of Justice¹⁰. Also located at the Royal Courts of Justice are the Criminal Appeal Office¹¹, the Civil

Appeals Office¹², the Administrative Court Office¹³ and the High Court appeals office for Central London¹⁴.

1 Supreme Court of Judicature (Officers) Act 1879 s 4 (repealed). Many offices were amalgamated with, and many court officers were transferred to, the Central Office by ss 5, 6 (repealed). These provisions were repealed and replaced by the Supreme Court of Judicature (Consolidation) Act 1925 s 104, Sch 6, which in turn has been repealed by the Supreme Court Act 1981 s 152(4), Sch 7. The present position is governed by s 96 (see the text and note 2 infra), which assumes the continued existence of the Central Office. For the meaning of 'the Supreme Court' see PARA 6 note 3 ante.

The Supreme Court of Judicature (Officers) Act 1879 placed the control and superintendence of the Central Office substantially under the masters of the Superior Common Law Courts, and this power was continued under the Supreme Court of Judicature (Consolidation) Act 1925 s 104(2), but this provision was repealed by the Courts Act 1971 s 56(4), Sch 11 Pt IV.

2 Supreme Court Act 1981 s 96(1). Subject to any direction of the Lord Chancellor under s 96, the Central Office is to perform such business as it performed immediately before 1 January 1982 (ie the commencement date of the Supreme Court Act 1981: see s 153(2)): s 96(2).

3 See *Practice Direction--Court Offices* PD 2A para 1.

4 As to masters of the Supreme Court see PARA 647 et seq post.

5 See the Supreme Court Act 1981 s 89(4); and PARA 654 post.

6 As to the Technology and Construction Court see PARA 616 ante. The registry is at St Dunstan's House, 133-137 Fetter Lane, London EC4A 1HD; as to its opening hours see PARA 507 ante.

7 *Queen's Bench Guide* (2000 Edn) PARA 1.6.3; and see note 3 supra. As to the Admiralty Court and the Commercial Court see PARA 615 ante. As to the Admiralty Registrar see PARA 660 post; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 140 et seq.

8 See *Practice Direction--Court Offices* PD 2A para 2.2; and CIVIL PROCEDURE vol 11 (2009) PARA 52. As to the opening hours of the Central Office see PARA 507 ante. As to Chancery Chambers, where Chancery business is conducted, see CIVIL PROCEDURE vol 11 (2009) PARA 53.

9 See note 6 supra.

10 As to the Royal Courts of Justice see PARA 601 ante.

11 As to the Registrar of Criminal Appeals see PARA 657 post.

12 The Civil Appeals Office deals with the administration of appeals to the Civil Division of the Court of Appeal. As to the Head of the Civil Appeals Office and the court officers assigned to that office see PARA 670 post.

13 As to the Administrative Court see PARA 614 ante. The Administrative Court Office is under the overall supervision of the Registrar of Criminal Appeals: see PARA 657 post.

14 As to appeals to the High Court see generally CIVIL PROCEDURE vol 12 (2009) PARA 1658 et seq. Other High Court appeals offices are located at the appeal centres in Birmingham, Nottingham, Leeds, Newcastle, Sheffield, Liverpool, Manchester, Preston, Cardiff, Chester, Swansea, Bristol, Exeter, Winchester, Lewes, Luton, Norwich and Reading: see PARA 511 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para

1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

641 The Central Office and other court offices located at the Royal Courts of Justice

TEXT AND NOTE 2--Supreme Court Act 1981 s 96 (now Senior Courts Act 1981 s 96) amended: Constitutional Reform Act 2005 Sch 4 para 141.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(5) SUPREME COURT OFFICES/642. The Supreme Court Costs Office.

642. The Supreme Court Costs Office.

Taxing masters of the Supreme Court are now known as 'costs judges'¹. There is a chief costs judge who is appointed by the Lord Chancellor². The costs judges and costs officers of the Supreme Court Costs Office also have jurisdiction to assess costs in the Principal Registry of the Family Division³. The assessment of costs and the work of the Supreme Court Costs Office is considered elsewhere in this work⁴.

The Supreme Court Costs Office is located at Clifford's Inn near the Royal Courts of Justice⁵.

1 See CPR 43.2(1)(c); and CIVIL PROCEDURE vol 12 (2009) PARA 1734.

2 See the Supreme Court Act 1981 s 89(3)(c); and PARA 656 post; and see generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

3 As to the Principal Registry of the Family Division see PARA 644 post.

4 See generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

5 As to the Royal Courts of Justice see PARA 601 ante; and as to court offices located there see also PARA 641 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(5) SUPREME COURT OFFICES/643. The Court Funds Office.

643. The Court Funds Office.

The Court Funds Office is the office of the Accountant General of the Supreme Court¹. This office and its procedures are discussed in detail elsewhere in this work².

1 Court Funds Rules 1987, SI 1987/821, r 3. As to the Accountant General see PARA 663 post.

2 See CIVIL PROCEDURE vol 12 (2009) PARA 1548 et seq.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(5) SUPREME COURT OFFICES/644. The Principal Registry of the Family Division.

644. The Principal Registry of the Family Division.

The offices of the Family Division of the High Court are separate from the Central Office of the Supreme Court, and the Principal Registry of that Division is located at First Avenue House, High Holborn, London¹. Costs in the Family Division are, however, assessed by costs judges and officers of the Supreme Court Costs Office².

The Principal Registry of the Family Division also administers the probate service throughout England and Wales³.

1 The offices were formerly located at Somerset House. As to the Family Division of the High Court see PARA 617 ante.

2 See PARA 642 ante.

3 See the *Annual Report of the Court Service 2001-2002* 'Court Service Structure: The work of the Courts' available at the date at which this title states the law on the Court Service website at www.courtservice.gov.uk. See also PARA 576 ante. As to the allocation of non-contentious probate business to the Family Division and contentious probate business to the Chancery Division of the High Court see PARAS 611, 617 ante. As to district probate registries see PARA 645 post.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

644 The Principal Registry of the Family Division

TEXT AND NOTES--See further PARA 644A for principle registry and district registries.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(5) SUPREME COURT OFFICES/644A. Principal Registry of the Family Division; district registries.

644A. Principal Registry of the Family Division; district registries.

'The Principal Registry' means the Principal Registry of the Family Division of the High Court¹. The commencement of any proceedings in the Principal Registry is not prevented² except where rules of court³ otherwise provide; and the following provisions have effect for the purposes of enabling proceedings to be dealt with in that Registry as in a divorce county court⁴.

The jurisdiction in matrimonial causes⁵ or matters conferred on divorce county courts⁶ is to be exercised in the Principal Registry:

- 263 (1) so far as it is exercisable by judges of such courts, at such sittings and in such places as the Lord Chancellor may direct; and
- 264 (2) so far as it is exercisable by district judges⁷ of such courts, by such district judges or by district judges and other officers of the Principal Registry according as rules of court may provide;

and rules of court may make provision for treating, for any purposes specified in the rules, matrimonial causes and matters pending in the Principal Registry with respect to which that jurisdiction is exercisable as pending in a divorce county court and for the application of the provisions relating to costs⁸ with respect to proceedings so treated⁹.

Where, by virtue of such rules, a matrimonial cause is pending in the Principal Registry as in a divorce county court, any ancillary¹⁰ or related¹¹ proceedings which could be taken in a divorce county court and which are not of a description excluded by the rules from the operation of this provision may be taken and dealt with in the Principal Registry as in a divorce county court¹².

Where a district judge of the Principal Registry is exercising jurisdiction in any matrimonial cause or matter which could be exercised by a district judge of a county court, he has the same powers in relation to those proceedings as if he were a district judge of a county court and the proceedings were in a county court¹³.

'District registry' means any district registry having a divorce county court within its district¹⁴.

1 Matrimonial and Family Proceedings Act 1984 s 42(6) (s 42 amended: Civil Partnership Act 2004 Sch 27 para 96; Constitutional Reform Act 2005 Sch 4 para 174); Family Proceedings Rules 1991, SI 1991/1247, r 1.2(1). As to the Family Division see PARA 603A. The Principal Registry of the Family Division was formerly known as the Principal Probate Registry and was originally established to exercise much of the Court of Probate under the Court of Probate Act 1857 s 4 (repealed). The Principal Probate Registry was renamed the Principal Registry of the Family Division by the Administration of Justice Act 1970 s 1(1) (repealed). The address of the Principal Registry of the Family Division is First Avenue House, 42-49 High Holborn, London WC1V 6NP.

2 le by the Matrimonial and Family Proceedings Act 1984 ss 33-35: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

3 le under *ibid* s 34(2).

4 *Ibid* s 42(1). For the meaning of 'divorce county court' see PARA 16. The Principal Registry is to be treated as a divorce county court: (1) for the purposes of any provision to be made by rules of court under s 33(2) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 732); (2) for the purpose of any provision to be made under s 34(2) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 733) prescribing the county court in which any proceedings are to be commenced; and (3) for the purpose of any transfer of family proceedings under s 38 (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 745) or s 39 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 746) between the High Court and a divorce county court: s 42(4).

5 For these purposes, 'matrimonial cause' means an action for divorce, nullity of marriage or judicial separation: *ibid* s 32 (amended by the Family Law Act 1986 s 68(1), Sch 1 para 27). As to divorce and judicial separation see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 697 et seq; as to nullity of marriage see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 319.

6 See NOTE 2.

7 For the meaning of 'district judge' see PARA 658A.

8 le the Solicitors Act 1974 s 74(3): see LEGAL PROFESSIONS vol 66 (2009) PARA 970.

9 Matrimonial and Family Proceedings Act 1984 s 42(2); Courts and Legal Services Act 1990 s 74(1).

10 For these purposes, proceedings are ancillary to a matrimonial cause if they are connected with the cause: Matrimonial and Family Proceedings Act 1984 s 42(6).

11 For these purposes, proceedings are related to a matrimonial cause if they are for protecting or otherwise relate to any rights, or the exercise of any rights, of the parties to the marriage as husband and wife or any children of the family: *ibid* s 42(6). The expression 'child of the family' is not defined for these purposes; but cf the definitions of 'child' and 'child of the family' in the Matrimonial Causes Act 1973 s 52(1) (as amended) (cited in MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 697).

12 Matrimonial and Family Proceedings Act 1984 s 42(3).

13 *Ibid* s 42(4A) (added by the Courts and Legal Services Act 1990 s 74(7)).

14 Family Proceedings Rules 1991, SI 1991/1247, r 1.2(1). 'District registry', except in relation to SI 1991/1247 r 4.22(2A), now means (1) in matrimonial proceedings, any district registry having a divorce county court within its district; (2) in civil partnership proceedings, any district registry having a civil partnership proceedings county court within its district; and (3) in any other case, any district registry having a designated county court within its district: r 1.2(1) (definition substituted by SI 2005/2922). 'Civil partnership proceedings' means proceedings of a kind with respect to which civil partnership proceedings county courts have jurisdiction by or under the Matrimonial and Family Proceedings Act 1984 s 36A, 36B or 36C: SI 1991/1247 r 1.2(8) (definition added by SI 2005/2922). 'Civil partnership proceedings county court' means a county court so designated by the Lord Chancellor under the 1984 Act s 36A; and 'designated county court' means a court designated as (a) a divorce county court; or (b) a civil partnership proceedings county court; or (c) both a divorce county court and a civil partnership proceedings county court: SI 1991/1247 r 1.2(1) (definitions added by SI 2005/2922).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(5) SUPREME COURT OFFICES/645. District probate registries.

645. District probate registries.

The Lord Chancellor¹ may by order direct that there are to be district probate registries of the High Court at such places and for such districts as are specified in the order². District probate registries have been established at Birmingham, Brighton, Bristol, Cardiff, Ipswich, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, Oxford and Winchester³. The district probate registry at Cardiff is known as the Probate Registry of Wales⁴.

District probate sub-registries have also been established, each of which is attached to and under the control of a district probate registrar⁵. Every district probate registrar must arrange for an officer of a district probate registry or of a district probate sub-registry to attend, for the purpose of personal applications for a grant of probate or administration, at such places and such times as may be specified by the Lord Chancellor, and any such place may be styled a probate office⁶.

¹ As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

² Supreme Court Act 1981 s 104(1). The order must be made by statutory instrument which must be laid before Parliament after being made: s 104(2). In the exercise of this power, the Lord Chancellor has made the District Probate Registries Order 1982, SI 1982/379 (art 2(1) renumbered, art 2(2) added, and Schedule amended by SI 1994/1103; the Schedule also amended by SI 1994/3079) which came into operation on 20 April 1982: see the District Probate Registries Order 1982, SI 1982/379, art 1.

³ Ibid art 2(1), Schedule col 1 (as respectively renumbered and amended: see note 2 supra).

⁴ Ibid art 2(2) (as added: see note 2 supra).

⁵ Ibid art 3. Such sub-registries have been established at Stoke-on-Trent, Maidstone, Bodmin, Exeter, Bangor, Carmarthen, Norwich, Peterborough, Lincoln, Sheffield, Chester, Lancaster, Nottingham, Carlisle, Middlesbrough, York, Gloucester and Leicester: see art 3, Schedule col 2 (as amended: see note 2 supra). As to district probate registrars see PARA 659 post.

⁶ Ibid art 4. The probate service in England and Wales is administered by the Principal Registry of the Family Division: see PARA 644 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para

1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

645 District probate registries

TEXT AND NOTE 2--1981 Act s 104 amended: Constitutional Reform Act 2005 Sch 4 para 144.

NOTE 2--SI 1982/379 further amended: Lord Chancellor (Transfer of Functions and Supplementary Provisions) Order 2006, SI 2006/680.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(5) SUPREME COURT OFFICES/646. District registries.

646. District registries.

The Lord Chancellor may by order, made by statutory instrument¹, direct that there are to be district registries of the High Court at such places and for such districts as are specified in the order².

There is a district registry for every part of England and Wales except in the London area³.

Under the old rules⁴ it was expressly provided that the procedure of the Central Office of the Supreme Court⁵ was to apply in the district registries. The Civil Procedure Rules make no such express provision; however it is to be assumed that the procedure set out in the practice guides of the Queen's Bench and Chancery Divisions⁶ and in the Family Proceedings Rules 1991⁷ and practice directions applies as appropriate in the district registries.

Every district registry must be open on the days and during the hours that the Lord Chancellor from time to time directs and, in the absence of any such directions, must be open on the same days and during the same hours as the county court offices of which it forms part are open⁸.

1 Supreme Court Act 1981 s 99(2). The statutory instrument must be laid before Parliament after being made: s 99(2).

2 Ibid s 99(1), which repeats in substance the Supreme Court of Judicature (Consolidation) Act 1925 s 84(1) (repealed), which in turn replaced the Supreme Court of Judicature Act 1873 s 60 (repealed), under which district registries were first established on 1 November 1875, the date on which the Supreme Court of Judicature Act 1875 came into force (s 2 (repealed)). The function of district registries was expressed to be to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply and conveniently carried on there.

3 See the Civil Courts Order 1983, SI 1983/713, art 4, Sch 1 (amended by SI 1984/297; SI 1984/1075; SI 1985/511; SI 1986/754; SI 1986/1361; SI 1986/2001; SI 1986/2207; SI 1988/2165; SI 1989/106; SI 1989/107; SI 1989/914; SI 1991/1809; SI 1991/2211; SI 1992/593; SI 1992/1345; SI 1992/1810; SI 1992/3071; SI 1993/1809; SI 1993/3120; SI 1994/706; SI 1994/1536; SI 1994/2626; SI 1994/2893; SI 1995/1897; SI 1995/3173; SI 1996/68; SI 1996/588; SI 1996/2579; SI 1997/361; SI 1997/1085; SI 1997/2310; SI 1997/2762; SI 1998/1880; SI 1998/2910; SI 1999/216; SI 1999/1011; SI 1999/3187; SI 2000/1482; SI 2000/2738; and SI 2001/4025) which provide for district registries (the districts of which are generally defined by reference to county court districts) at Aberystwyth, Barnsley, Barnstaple, Barrow in Furness, Basingstoke, Bath, Bedford, Birkenhead, Birmingham, Blackburn, Blackpool, Blackwood, Bolton, Boston, Bournemouth, Bradford, Brecon ('Brecknock District Registry'), Bridgend, Brighton, Bristol, Burnley, Bury, Bury St Edmunds, Caernarfon, Cambridge, Canterbury, Cardiff, Carlisle, Carmarthen, Chatham ('Medway District Registry'), Chelmsford, Cheltenham, Chester, Chesterfield, Chichester, Colchester, Coventry, Crewe, Croydon, Darlington, Derby, Dewsbury, Doncaster, Dudley, Durham, Eastbourne, Exeter, Gloucester, Great Grimsby, Guildford, Halifax, Harlow, Harrogate, Hartlepool, Hastings, Haverfordwest, Hereford, Huddersfield, Ipswich, Keighley, Kendal, King's Lynn, Kingston

upon Hull, Lancaster, Leeds, Leicester, Lincoln, Liverpool, Llangefni, Lowestoft, Luton, Macclesfield, Maidstone, Manchester, Mansfield, Margate ('Thanet District Registry'), Merthyr Tydfil, Middlesbrough, Milton Keynes, Newcastle upon Tyne, Newport (Gwent), Newport (IOW), Northampton, Norwich, Nottingham, Oldham, Oxford, Peterborough, Plymouth, Pontefract, Pontypridd, Portsmouth, Preston, Reading, Rhyl, Romford, St Helens, Salford, Salisbury, Scarborough, Scunthorpe, Sheffield, Shrewsbury, Southampton, Southend on Sea, Southport, South Shields, Stafford, Stockport, Stoke on Trent, Sunderland, Swansea, Swindon, Taunton, Torquay ('Torquay and Newton Abbot District Registry'), Truro, Tunbridge Wells, Wakefield, Walsall, Warrington, Welshpool, Weymouth, Whitehaven, Wigan, Winchester, Wolverhampton, Worcester, Worthing, Wrexham, Yeovil and York. As to county court districts see PARA 707 post.

4 See RSC Ord 63 (revoked subject to transitional provisions).

5 As to the Central Office of the Supreme Court see PARA 641 ante.

6 As to *The Queen's Bench Guide* and *The Chancery Guide* (2000 Edns) see CIVIL PROCEDURE vol 11 (2009) PARA 16; and as to their contents see further *The Civil Court Practice*. The district registries at Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle upon Tyne and Preston are specifically designated as Chancery courts: see the Civil Courts Order 1983, SI 1983/713, art 4, Sch 1 (as amended).

7 As to the Family Proceedings Rules 1991, SI 1991/1247 (as amended), see CHILDREN AND YOUNG PERSONS; MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

8 *Practice Direction--Court Offices* PD 2A para 2.1(3). As to the opening hours of county court offices see PARA 509 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

646 District registries

TEXT AND NOTES 1, 2--1981 Act s 99 amended: Constitutional Reform Act 2005 Sch 4 para 143.

NOTE 3--There is also a district registry at Mold: SI 1983/713 Sch 1 (further amended by SI 2007/786).

NOTE 6--The district registry at Mold is also specifically designated as a Chancery court: SI 1983/713 Sch 1 (further amended by SI 2007/786).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(i) In general/647. Qualification for office; in general.

(6) SUPREME COURT OFFICERS

(i) In general

647. Qualification for office; in general.

A person is not qualified for appointment to any of certain specified offices in the Supreme Court¹ unless he satisfies the specified description² in relation to that office³.

Persons holding such offices are disqualified for membership of the House of Commons⁴.

1 The specified offices are: Official Solicitor (see PARA 667 post); Queen's Bench master or Chancery master (see PARAS 654-655 post); Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals (see PARA 657 post); Admiralty Registrar (see PARA 660 post); registrar in bankruptcy of the High Court (see PARA 666 post); taxing master of the Supreme Court (now known as a costs judge) (see PARA 656 post); district judge of the Principal Registry of the Family Division (see PARA 658 post); master of the Court of Protection (see PARA 668 post); and district probate registrar (see PARA 659 post): see the Supreme Court Act 1981 s 88, Sch 2 col 1 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49; amended by the Supreme Court (Offices) Act 1997 s 1; and by the Access to Justice Act 1999 s 106, Sch 15 Pt III).

2 The specified descriptions of person are normally persons with a general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see PARA 530 note 1 ante) held for varying lengths of time depending on the office: see the Supreme Court Act 1981 Sch 2 col 2 (as substituted and amended: see note 1 supra). District judges and district probate registrars do not, however, necessarily require such a general qualification. The specific requirements in relation to each such office are set out below.

3 Ibid s 88.

4 See the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (as amended); and PARLIAMENT vol 78 (2010) PARA 908.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

647 Qualification for office; in general

NOTE 1--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also 2007 Act Sch 10 para 13(4), (5). 1997 Act s 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(i) In general/648. Appointment of masters, costs judges, district judges and registrars.

648. Appointment of masters, costs judges, district judges and registrars.

The power to make appointments to certain specified offices in the Supreme Court¹ is exercisable by the Lord Chancellor², with the concurrence of the Treasury³ as to numbers and salaries⁴. The salaries of such officers are to be paid out of money provided by Parliament⁵.

1 The specified offices are: Queen's Bench master or Chancery master (see PARAS 654-655 post); Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals (see PARA 657 post); Admiralty Registrar (see PARA 660 post); registrar in bankruptcy of the High Court (see PARA 666 post); taxing master of the Supreme Court (now known as a costs judge) (see PARA 656 post); district judge of the Principal Registry of the Family Division (see PARA 658 post); master of the Court of Protection (see PARA 668 post); and district probate registrar (see PARA 659 post): see the Supreme Court Act 1981 s 89(1), Sch 2 col 1 Pts II, III (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49; amended by the Supreme Court (Offices) Act 1997 s 1; and by the Access to Justice Act 1999 s 106, Sch 15 Pt III).

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

4 Supreme Court Act 1981 s 89(1).

5 Ibid s 89(8).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

648 Appointment of masters, costs judges, district judges and registrars

TEXT AND NOTES 1, 4--Supreme Court Act 1981 s 89(1) (now Senior Courts Act 1981 s 89(1)) amended: Constitutional Reform Act 2005 Sch 3 para 3(2) (in force for certain purposes: see SI 2006/1014). The maximum number of appointments under the 1981 Act s 89(1) is such as may be determined from time to time by the Lord Chancellor with the concurrence of the Treasury: s 89(1A) (added by Constitutional Reform Act 2005 Sch 3 para 3(3)) (in force for certain purposes: see SI 2006/1014). A person appointed under the 1981 Act s 89(1) is to be paid such salary, and a person appointed to a senior office is to be paid such additional salary, as may be determined by the Lord Chancellor with the concurrence of the Treasury: s 89(7A) (added by Constitutional Reform Act 2005 Sch 3 para 3(5)) (in force for certain purposes: see SI 2006/1014). A salary payable under or by virtue of the 1981 Act s 89(1) may in any case be increased, but (2) may not, in the case of a salary payable in respect of an office listed in Sch 2 Pt 2 col 1 or of a senior office, be reduced, by a determination or further determination under s 89: s 89(7B) (as so added) (in force for certain purposes: see SI 2006/1014).

See further 2005 Act s 85, Sch 14 Pt 1; and PARA 515B.18.

NOTE 1--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

1997 Act s 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(i) In general/649. Deputies and temporary appointments.

649. Deputies and temporary appointments.

If it appears to the Lord Chancellor¹ that it is expedient to do so in order to facilitate the disposal of business in the Supreme Court², he may appoint a person to act as a deputy for any person holding a specified office³ or to act as a temporary additional officer in any such office, during such period or on such occasions as the Lord Chancellor thinks fit⁴. A person is not, however, qualified for appointment under this provision if the office in which he would act by virtue of the appointment is one to which he is not qualified for permanent appointment⁵; but he may be so appointed if he would, but for his age, be qualified for permanent appointment to the office in question and he has previously held a permanent appointment to that office or to certain other offices⁶. No such appointment may be such as to extend beyond the day on which the person in question attains the age of 75 years⁷.

Every person, while acting under these provisions, has all the jurisdiction of a person permanently appointed to the office in which he is acting⁸.

The Lord Chancellor may, out of money provided by Parliament, pay to any person so appointed such remuneration and allowances as he may, with the concurrence of the Treasury⁹, determine¹⁰.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to the Supreme Court of England and Wales see PARA 601 et seq ante.

3 The specified offices are: (1) Queen's Bench master or Chancery master (see PARAS 654-655 post); (2) Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals (see PARA 657 post); (3) Admiralty Registrar (see PARA 660 post); (4) registrar in bankruptcy of the High Court (see PARA 666 post); (5) taxing master of the Supreme Court (now known as a costs judge) (see PARA 656 post); (6) district judge of the Principal Registry of the Family Division (see PARA 658 post); (7) master of the Court of Protection (see PARA 668 post); and (8) district probate registrar (see PARA 659 post): see the Supreme Court Act 1981 s 89(1), Sch 2 col 1 Pts II, III (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49; amended by the Supreme Court (Offices) Act 1997 s 1; and by the Access to Justice Act 1999 s 106, Sch 15 Pt III).

4 Supreme Court Act 1981 s 91(1).

5 Ibid s 91(2). As to qualifications for appointment generally see PARA 647 ante. Appointment to such offices is by open competition: see eg the *Times*, 30 April 2002 (advertisement for deputy district judges and deputy Queen's Bench masters to serve from 1 April 2003; the selection process was to include attendance at an assessment centre over one full day for job related exercises, appropriate tests and an interview).

6 See the Supreme Court Act 1981 s 91(3). The other offices referred to in the text are: (1) where the office in question is listed in Sch 2 Pt II col 1 (as substituted and amended: see note 3 supra) (ie any of the offices listed in note 3 heads (1)-(7) supra), any other office so listed; or (2) where the office in question is listed in Sch 2 Pt III col 1 (as so substituted and amended) (ie the office of district probate registrar), any other office so listed or any other office listed in Sch 2 Pt II col 1 (as so substituted and amended) (see head (1) supra); or (3)

whatever the office in question, the office of county court district judge (see PARA 728 post): s 91(3)(a)-(c) (amended by virtue of the Courts and Legal Services Act 1990 s 74(1)(a), (3)). See also note 5 supra.

7 Supreme Court Act 1981 s 91(3) (amended by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 15).

8 Supreme Court Act 1981 s 91(4).

9 The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

10 Supreme Court Act 1981 s 91(6).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

649 Deputies and temporary appointments

NOTE 3--Supreme Court Act 1981 s 89(1) (now Senior Courts Act 1981 s 89(1)) amended: Constitutional Reform Act 2005 Sch 3 para 3(2) (in force for certain purposes: see SI 2006/1014). The maximum number of appointments under the 1981 Act s 89(1) is such as may be determined from time to time by the Lord Chancellor with the concurrence of the Treasury: s 89(1A) (added by Constitutional Reform Act 2005 Sch 3 para 3(3)) (in force for certain purposes: see SI 2006/1014). A person appointed under the 1981 Act s 89(1) is to be paid such salary, and a person appointed to a senior office is to be paid such additional salary, as may be determined by the Lord Chancellor with the concurrence of the Treasury: s 89(7A) (s 89(7A), (7B) added by Constitutional Reform Act 2005 Sch 3 para 3(5)) (in force for certain purposes: see SI 2006/1014). A salary payable under or by virtue of the 1981 Act s 89 (1) may in any case be increased, but (2) may not, in the case of a salary payable in respect of an office listed in Sch 2 Pt 2 col 1 or of a senior office, be reduced, by a determination or further determination under s 89: s 89(7B) (in force for certain purposes: see SI 2006/1014).

See further 2005 Act s 85, Sch 14 Pt 1; and PARA 515B.18.

Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

1997 Act s 1 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 4-10--Supreme Court Act 1981 s 91 (now Senior Courts Act 1981 s 91) further amended: Constitutional Reform Act 2005 Sch 4 para 139, Sch 18 Pt 2; Tribunals, Courts and Enforcement Act 2007 s 57(1)-(5).

The Lord Chancellor's function under the 1981 Act s 91(1), (1A) and (6) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 4--See further Constitutional Reform Act 2005 Sch 14 Pt 2 (amended by 2007 Act s 57(7)).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(i) In general/650. Status of officers for purposes of salary and pensions.

650. Status of officers for purposes of salary and pensions.

Any person who holds a specified office in the Supreme Court¹ or the office of Accountant General of the Supreme Court² and who is not employed in the civil service of the state³ is deemed to be so employed for the purposes of salary and pension⁴. So far as it relates to pension, this provision does not, however apply to a person holding qualifying judicial office⁵ within the meaning of the Judicial Pensions and Retirement Act 1993⁶.

1 An office specified in the Supreme Court Act 1981 s 93, Sch 2 Pts I-III col 1 (as substituted and amended): see PARA 647 note 1 ante.

2 As to the Accountant General of the Supreme Court see PARA 663 post.

3 As to the civil service see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Supreme Court Act 1981 s 93(1) (amended by the Public Trustee and Administration of Funds Act 1986 s 1(3), Schedule para 2).

5 For the meaning of 'qualifying judicial office' see PARA 539 ante.

6 Supreme Court Act 1981 s 93(2) (amended by the Judicial Pensions and Retirement Act 1993 s 31(3), Sch 8 para 15(2)).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(i) In general/651. Tenure of office; in general.

651. Tenure of office; in general.

Subject to the following provisions, and to the Lord Chancellor's¹ power to authorise continuance in office up to the age of 75², a person who holds a specified office in the Supreme Court³ must vacate it on the day on which he attains the age of 70 years⁴. The Official Solicitor⁵ must vacate office at the end of the completed year of service in the course of which he attains the age of 62 years⁶ and a person holding the office of Queen's Coroner and Attorney and Master of the Crown Office⁷ and Registrar of Criminal Appeals⁸ must vacate it on the day on which he attains the age of 62 years⁹. Where, however, the Lord Chancellor considers it desirable in the public interest to retain in office a person who holds the office of Official Solicitor after the time when he would otherwise retire, the Lord Chancellor may from time to time authorise the continuance in office of that person until such date, not being later than the date on which he attains the age of 65 years, as the Lord Chancellor thinks fit¹⁰.

A person appointed to an office to which the above provisions apply holds that office during good behaviour¹¹. The power to remove such a person from his office on account of misbehaviour is exercisable by the Lord Chancellor¹², who may also remove such a person from his office on account of inability to perform the duties of his office¹³.

A person appointed to the office of district probate registrar¹⁴ holds that office during Her Majesty's pleasure¹⁵.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 See the Judicial Pensions and Retirement Act 1993 s 26(4)-(6); and PARA 535 ante.

3 I.e. an office listed in the Supreme Court Act 1981 s 92, Sch 2 Pt II col 1 (as substituted and amended) except the office of Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals: s 92(2) (s 92(2) substituted, s 92(2A), (2B), (3A) added, and s 92(4) amended, by the Courts and Legal Services Act 1990 s 77). As to the offices so listed see PARA 649 note 3 heads (1), (3)-(7) ante.

4 Supreme Court Act 1981 s 92(1) (s 92(1), (2B), (4) amended, and s 92(2D), (2E) added, by the Judicial Pensions and Retirement Act 1993 s 26(1), Sch 6 para 14).

5 I.e. a person holding an office listed in the Supreme Court Act 1981 Sch 2 Pt I col 1 (as substituted and amended): see s 92(2B) (as substituted and amended: see notes 3-4 supra). As to the Official Solicitor see PARA 667 post.

6 Ibid s 92(2A) (as added: see note 3 supra).

7 Crown Office business is now conducted in the Administrative Court: see PARA 614 ante.

8 As to the Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals see PARA 657 post.

9 Supreme Court Act 1981 s 92(2D), (2E) (as added: see note 4 supra).

10 Ibid s 92(3A) (as added: see note 3 supra).

11 Ibid s 92(4) (as amended: see note 4 supra).

12 Ibid s 92(5).

13 Ibid s 92(6).

14 I.e. a person appointed to an office listed in ibid s 92, Sch 2 Pt III col 1 (as substituted and amended): s 92(7). As to district probate registrars see PARA 659 post.

15 Ibid s 92(7).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

651 Tenure of office; in general

TEXT AND NOTES 4, 10--The Lord Chancellor's functions under the Supreme Court Act 1981 s 92(1), (3A) (now Senior Courts Act 1981 s 92(1), (3A)) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 4--1981 Act s 92(1) further amended: Tribunals, Courts and Enforcement Act 2007 s 57(6).

TEXT AND NOTES 12-15--1981 Act s 92(5), (6) amended, s 92(8) added: Constitutional Reform Act 2005 Sch 4 para 140.

TEXT AND NOTE 12--As to provisions relating to the discipline of judicial office holders, see *ibid* Pt 4 Ch 3; and PARA 516A.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(i) In general/652. Judicial oaths to be taken by certain officers.

652. Judicial oaths to be taken by certain officers.

Persons holding any of certain specified offices must take the oath of allegiance¹ and the judicial oath² before a judge of the High Court³ or a circuit judge⁴. Those persons are: a district judge⁵, including a district judge of the Principal Registry of the Family Division⁶; a master of the Queen's Bench Division⁷ or of the Chancery Division⁸; a registrar in bankruptcy of the High Court⁹; a costs judge¹⁰ of the Supreme Court¹¹; and the Admiralty Registrar¹².

¹ See the Promissory Oaths Act 1868 s 2; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

² See *ibid* s 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923.

³ As to High Court judges see PARAS 515, 602, 619 ante.

⁴ Courts and Legal Services Act 1990 s 76(1), (2).

⁵ As to district judges see PARAS 661-662 post.

⁶ As to district judges of the Principal Registry of the Family Division see PARA 658 post.

⁷ As to Queen's Bench masters see PARA 654 post.

- 8 As to Chancery masters see PARA 655 post.
- 9 As to registrars in bankruptcy see PARA 666 post.
- 10 Described in the Courts and Legal Services Act 1990 as a 'taxing master': but see CIVIL PROCEDURE vol 12 (2009) PARA 1734.
- 11 As to costs judges see PARA 656 post.
- 12 As to the Admiralty Registrar see PARA 660 post.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(i) In general/653. Property held by certain officers.

653. Property held by certain officers.

Any property held in his official capacity by a person holding a specified office¹ in the Supreme Court² or by the Official Solicitor³ vests, on his dying or ceasing to hold office, in the person appointed to succeed him without any conveyance, assignment or transfer⁴.

1 ie a person holding an office listed in the Supreme Court Act 1981 s 95, Sch 2 Pt II col 1 (as substituted and amended): s 95. As to the specified offices see PARA 649 note 3 heads (1)-(7) ante.

2 As to the Supreme Court of England and Wales see PARA 601 et seq ante.

3 As to the Official Solicitor see PARA 667 post.

4 Supreme Court Act 1981 s 95.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/654. Queen's Bench masters.

(ii) Appointments to Specific Offices

654. Queen's Bench masters.

The masters of the Queen's Bench Division are appointed by the Lord Chancellor with the concurrence of the Treasury as to numbers and salaries¹, and the Lord Chancellor is to appoint one of them to be the Senior Master². The Senior Master performs the duties of the offices of the Queen's Remembrancer, with such additional salary in respect of that office as may be determined by the Lord Chancellor with the concurrence of the Treasury³, and of the Registrar of Judgments, including those relating to European Community judgments and Euratom inspection orders when these have to be enforced in England⁴. He is also the prescribed officer for the trial of all election petitions⁵.

The Queen's Coroner and Attorney and Master of the Crown Office⁶ and Registrar of Criminal Appeals is appointed by the Lord Chancellor and is, by virtue of his appointment, a master of the Queen's Bench Division⁷.

The duties of the Queen's Bench masters comprise judicial work, including granting pre-trial orders and interim remedies, but subject to a number of restrictions which are set out in detail elsewhere in this work⁸.

One master sits daily as Practice Master; he has to be present at and superintend the business of the Central Office⁹ and give any necessary directions on questions of practice and procedure¹⁰.

The qualification for appointment as a Queen's Bench master is to hold a seven year general qualification¹¹ within the meaning of the Courts and Legal Services Act 1990¹². The Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals must, however, hold a 10 year general qualification¹³. A master holds office during good behaviour and the Lord Chancellor has power to remove him from office for misbehaviour or inability to perform his duties¹⁴. The Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals may, unless he has vacated office because he was removed from it, act as if he had not ceased to hold the office for the purpose of continuing to deal with, giving judgment in, or dealing with any ancillary matter relating to, any case begun before him before he ceased to hold that office¹⁵. His normal retirement age is 62 years whereas the normal retirement age of other Queen's Bench masters is 70 years¹⁶. Queen's Bench masters hold offices which are qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993¹⁷.

Queen's bench masters who have held the office for at least three years are eligible for appointment as circuit judges¹⁸.

Queen's bench masters are barred from legal practice¹⁹ and disqualified for membership of the House of Commons²⁰. They must take the oath of allegiance and the judicial oath²¹.

1 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury. As to the

Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq; and as to the Queen's Bench Division see PARA 613 ante.

2 Supreme Court Act 1981 s 89(3)(a).

3 Ibid s 89(2), (4). See also note 1 supra.

4 See ibid s 89(4); and CIVIL PROCEDURE vol 12 (2009) PARA 1232.

5 See ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 768.

6 Crown Office business is now conducted in the Administrative Court: see PARA 614 ante.

7 Supreme Court Act 1981 s 89(2) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 paras 37, 38). As to the Registrar of Criminal Appeals, whose office was combined with that of Queen's Coroner and Attorney and Master of the Crown Office by the Courts and Legal Services Act 1990 s 78(1), see further PARA 657 post.

8 See CIVIL PROCEDURE vol 11 (2009) PARA 50.

9 As to the Central Office of the Supreme Court see PARA 641 ante.

10 See *Practice Direction--Court Offices* PD 2A para 2.2; and PARA 641 ante.

11 For the meaning of 'general qualification' see PARA 530 note 1 ante.

12 Supreme Court Act 1981 s 88, Sch 2 Pt II para 3 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

13 Supreme Court Act 1981 Sch 2 Pt II para 4 (as substituted: see note 12 supra).

14 See ibid s 92(4)-(6) (as amended); and PARA 651 ante.

15 See the Judicial Pensions and Retirement Act 1993 s 27(1), (3)(c); and PARA 536 ante.

16 See the Supreme Court Act 1981 s 92(1), (2D), (2E) (as respectively amended and added); and PARA 651 ante.

17 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.

18 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.

19 Courts and Legal Services Act 1990 s 75, Sch 11.

20 See PARA 647 note 4 ante.

21 See PARA 652 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

654 Queen's Bench masters

TEXT AND NOTE 1--Any recommendation for appointment to the office of Master, Queen's Bench Division in exercise of the function under the Supreme Court Act 1981 s 89(1) (now Senior Courts Act 1981 s 89(1)) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

TEXT AND NOTE 2--1981 Act s 89(3) substituted: 2005 Act Sch 3 para 3(4). See further s 85, Sch 14 Pt 1; and PARA 515B.18.

NOTE 12--1981 Act Sch 2 now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/655. Chancery masters.

655. Chancery masters.

The masters of the Chancery Division¹ are appointed by the Lord Chancellor with the concurrence of the Treasury as to numbers and salaries²; and the Lord Chancellor is to appoint one of them to be the Chief Chancery Master, with such additional salary in respect of that appointment as the Lord Chancellor may with the like concurrence determine³. The administrative business of the Chancery Division is now conducted by Chancery Chambers⁴.

The duties of the Chancery masters comprise judicial work, including granting pre-trial orders and interim remedies, but subject to a number of restrictions which are set out in detail elsewhere in this work⁵.

The qualification for appointment as a Chancery master is to hold a seven year general qualification⁶ within the meaning of the Courts and Legal Services Act 1990⁷. A master holds office during good behaviour and the Lord Chancellor has power to remove him from office for misbehaviour or inability to perform his duties⁸. His normal retirement age is 70 years⁹. Chancery masters hold offices which are qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993¹⁰.

Chancery masters who have held the office for at least three years are eligible for appointment as circuit judges¹¹.

Chancery masters are barred from legal practice¹² and disqualified for membership of the House of Commons¹³. They must take the oath of allegiance and the judicial oath¹⁴.

1 These officers trace their institutional descent from at least the fourteenth century, when they were the clerks to the Masters in Ordinary (other than the Master of the Rolls) of the ancient Court of Chancery. From 1852 they were known as Chief Clerks but became entitled to be called Masters of the Supreme Court by an order of the Lord Chancellor dated 22 February 1897, and this designation was adopted in the Supreme Court of Judicature (Consolidation) Act 1925 (repealed) and subsequent legislation. As to the Chancery Division see PARA 611 ante.

2 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

3 Supreme Court Act 1981 s 89(3)(b).

4 See CIVIL PROCEDURE vol 11 (2009) PARA 53.

- 5 See CIVIL PROCEDURE vol 11 (2009) PARA 50.
- 6 As to holding such a qualification see PARA 530 note 1 ante.
- 7 Supreme Court Act 1981 s 88, Sch 2 Pt II para 6 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).
- 8 See the Supreme Court Act 1981 92(4)-(6) (as amended); and PARA 651 ante.
- 9 See *ibid* s 92(1) (as amended); and PARA 651 ante.
- 10 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.
- 11 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.
- 12 Courts and Legal Services Act 1990 s 75, Sch 11.
- 13 See PARA 647 note 4 ante.
- 14 See PARA 652 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

655 Chancery masters

TEXT AND NOTE 2--Any recommendation for appointment to the office of Master, Chancery Division in exercise of the function under the Supreme Court Act 1981 s 89(1) (now Senior Courts Act 1981 s 89(1)) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

TEXT AND NOTE 3--1981 Act s 89(3) substituted: 2005 Act Sch 3 para 3(4). See further s 85, Sch 14 Pt 1; and PARA 515B.18.

NOTE 7--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/656. Costs judges.

656. Costs judges.

The masters of the Supreme Court Costs Office¹, who are now known as costs judges², are appointed by the Lord Chancellor with the concurrence of the Treasury as to numbers and salaries³; and the Lord Chancellor must appoint one of them as the chief costs judge, with such additional salary in respect of that appointment as the Lord Chancellor may with the like concurrence determine⁴. The powers and duties of costs judges are discussed elsewhere in this work⁵.

The qualification for appointment as a costs judge is to hold a seven year general qualification⁶ within the meaning of the Courts and Legal Services Act 1990⁷. A costs judge holds office during good behaviour and the Lord Chancellor has power to remove him from office for misbehaviour or inability to perform his duties⁸. His normal retirement age is 70 years⁹. Costs judges hold offices which are qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993¹⁰.

Costs judges who have held the office for at least three years are eligible for appointment as circuit judges¹¹.

Costs judges are barred from legal practice¹² and disqualified for membership of the House of Commons¹³. They must take the oath of allegiance and the judicial oath¹⁴.

1 As to the Supreme Court Costs Office see PARA 642 ante.

2 See CIVIL PROCEDURE vol 12 (2009) PARA 1734.

3 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

4 Supreme Court Act 1981 s 89(3)(c).

5 See generally CIVIL PROCEDURE vol 12 (2009) PARA 1729 et seq.

6 As to holding such a qualification see PARA 530 note 1 ante.

7 Supreme Court Act 1981 s 88, Sch 2 Pt II para 8 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

8 See the Supreme Court Act 1981 92(4)-(6) (as amended); and PARA 651 ante.

9 See ibid s 92(1) (as amended); and PARA 651 ante.

10 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.

11 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.

12 Courts and Legal Services Act 1990 s 75, Sch 11.

13 See PARA 647 note 4 ante.

14 See PARA 652 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they

occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

656 Costs judges

TEXT AND NOTE 4--Supreme Court Act 1981 s 89(3) (now Senior Courts Act 1981 s 89(3)) substituted: Constitutional Reform Act 2005 Sch 3 para 3(4).

NOTE 7--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/657. Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals.

657. Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals.

The office of Registrar of Criminal Appeals is combined with that of Queen's Coroner and Attorney and Master of the Crown Office¹ and the appointment, qualifications and tenure of a person holding that office have already been discussed². In relation to criminal appeals his functions are described elsewhere in this work³.

The Administrative Court Office⁴ is run by the head of that office under the overall supervision of the Registrar of Criminal Appeals.

1 Courts and Legal Services Act 1990 s 78(1). Crown Office business is now conducted in the Administrative Court: see PARA 614 ante.

2 See PARA 654 ante.

3 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq.

4 As to the Administrative Court see PARA 614 ante; and as to the Administrative Court Office see also PARA 641 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/658. District judges of the Principal Registry of the Family Division.

658. District judges of the Principal Registry of the Family Division.

The district judges of the Principal Registry of the Family Division¹ are appointed by the Lord Chancellor with the concurrence of the Treasury as to numbers and salaries²; and the Lord Chancellor must appoint one of those district judges to be the Senior District Judge of the Family Division, with such additional salary in respect of that appointment as the Lord Chancellor may with the like concurrence determine³. The powers and duties of such district judges are discussed elsewhere in this work⁴.

The qualification for appointment as a district judge of the Principal Registry of the Family Division is either (1) to hold a seven year general qualification⁵ within the meaning of the Courts and Legal Services Act 1990⁶; or (2) to be a district probate registrar⁷ who is either of at least five years' standing or who has served, during so much of the 10 years immediately preceding his appointment as he has not been a district probate registrar, as a civil servant in the Principal Registry or in a district probate registry⁸; or (3) to be a civil servant who has served at least 10 years in the Principal Registry or in a district probate registry⁹. Such a district judge holds office during good behaviour and the Lord Chancellor has power to remove him from office for misbehaviour or inability to perform his duties¹⁰. His normal retirement age is 70 years¹¹. District judges in the Principal Registry of the Family Division hold offices which are qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993¹².

District judges in the Principal Registry of the Family Division who have held the office for at least three years are eligible for appointment as circuit judges¹³.

Such district judges are barred from legal practice¹⁴ and disqualified for membership of the House of Commons¹⁵. They must take the oath of allegiance and the judicial oath¹⁶.

1 As to the Principal Registry of the Family Division see PARA 644 ante.

2 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

3 Supreme Court Act 1981 s 89(3)(e) (substituted by the Courts and Legal Services Act 1990 s 125(3), Sch 18 paras 37, 38).

4 See generally CHILDREN AND YOUNG PERSONS; EXECUTORS AND ADMINISTRATORS; MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

5 As to holding such a qualification see PARA 530 note 1 ante.

6 Supreme Court Act 1981 s 88, Sch 2 Pt II para 9(1) (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

7 As to district probate registrars see PARA 659 post.

8 Supreme Court Act 1981 Sch 2 Pt II para 9(2) (as substituted: see note 6 supra). As to district probate registries see PARA 645 ante; and as to persons who are civil servants see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Ibid Sch 2 Pt II para 9(3) (as substituted: see note 6 supra).

- 10 See *ibid* 92(4)-(6) (as amended); and PARA 651 ante.
- 11 See *ibid* s 92(1) (as amended); and PARA 651 ante.
- 12 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.
- 13 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.
- 14 Courts and Legal Services Act 1990 s 75, Sch 11.
- 15 See PARA 647 note 4 ante.
- 16 See PARA 652 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

658 District judges of the Principal Registry of the Family Division

TEXT AND NOTES--For district judges and senior district judges, see PARA 658A; for the practice to be observed in district registries and divorce county courts, see PARA 658B; for appointment and officers authorised to assess costs, see PARA 658C.

TEXT AND NOTE 2--Any recommendation for appointment to the office of district judge of the Principal Registry of the Family Division in exercise of the function under the Supreme Court Act 1981 s 89(1) (now Senior Courts Act 1981 s 89(1)) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

TEXT AND NOTE 3--1981 Act s 89(3) substituted: 2005 Act Sch 3 para 3(4). See further s 85, Sch 14 Pt 1; and PARA 515B.18.

NOTE 6--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/658A. District judges; senior district judge.

658A. District judges; senior district judge.

'District judge', in relation to proceedings in the Principal Registry¹, a district registry² or a county court, means the district judge or one of the district judges of that registry or county

court, as the case may be³. A person holding the office of district judge, including district judge of the Principal Registry, must take the oath of allegiance and the judicial oath before a judge of the High Court or a circuit judge⁴.

The Lord Chancellor must appoint one of the district judges of the Principal Registry as senior district judge of the Family Division⁵; and 'senior district judge' means the senior district judge of the Family Division or, in his absence from the Principal Registry, the senior of the district judges in attendance at the Principal Registry⁶.

1 For the meaning of 'the Principal Registry' see PARA 644A.

2 For the meaning of 'district registry' see PARA 644A.

3 Family Proceedings Rules 1991, SI 1991/1247, r 1.2(1). The power to appoint district judges is exercisable by the Lord Chancellor, with the concurrence of the Minister for the Civil Service as to numbers and salaries: Senior Courts Act 1981 s 89(1), Sch 2 Pt II col 1 (s 89(1) amended by the Constitutional Reform Act 2005 Sch 3 para 3 (partly in force: see SI 2006/1014)). See also 2005 Act s 85, Sch 14 Pt 1; Sch 2 substituted by the Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5)). As to the persons qualified to be so appointed see the Senior Courts Act 1981 Sch 2 Pt II col 2 (as substituted); and PARA 647. See further PARA 515B.18.

4 Courts and Legal Services Act 1990 s 76(1)(a). As to the oath of allegiance and the judicial oath see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 923, 924.

5 Senior Courts Act 1981 s 89(3)(e) (substituted by the Constitutional Reform Act 2005 Sch 3 para 3 (partly in force: see SI 2006/1014)), see NOTE 3. As to the Family Division see PARA 603A.

6 Family Proceedings Rules 1991, SI 1991/1247, r 1.2(1).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/658B. Practice to be observed in district registries and divorce county courts.

658B. Practice to be observed in district registries and divorce county courts.

The Head of Family Justice¹ and the senior district judge² may, with the concurrence of the Lord Chancellor, issue directions for the purpose of securing in the district registries³ and the divorce county courts⁴ due observance of statutory requirements and uniformity of practice in family proceedings⁵.

- 1 As to the Head of Family Justice see PARA 530D.
- 2 For the meaning of 'senior district judge' see PARA 658A.
- 3 For the meaning of 'district registry' see PARA 644A.
- 4 For the meaning of 'divorce county court' see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 732.
- 5 Family Proceedings Rules 1991, SI 1991/1247, r 10.22(1). For these purposes, unless the context otherwise requires, 'family proceedings' has the meaning assigned to it by the Matrimonial and Family Proceedings Act 1984 s 32 (as amended): Family Proceedings Rules 1991, SI 1991/1247, r 1.2(1).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/658C. Appointment and officers authorised to assess costs.

658C. Appointment and officers authorised to assess costs.

The Lord Chancellor may, with the concurrence of the Treasury as to numbers and salaries, appoint such officers and other staff for the Family Division of the High Court¹ and county courts as appear to him appropriate.

In particular, the Lord Chancellor may authorise any officer of the Principal Registry of the Family Division² (an 'authorised court officer') to assess costs³.

- 1 As to the Head of Family Justice see PARA 603A.
- 2 As to the Principal Registry of the Family Division see PARA 644A.
- 3 See CPR 43.2(1)(d); see CIVIL PROCEDURE vol 12 (2009) PARA 1734. As to costs in matrimonial causes see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 1037 et seq.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/659. District probate registrars.

659. District probate registrars.

District probate registrars are appointed by the Lord Chancellor, with the concurrence of the Treasury as to numbers and salaries¹. District probate registrars may make grants of probate in the name of the High Court under the seal used in the registry². Their powers and duties are discussed elsewhere in this work³.

The qualification for appointment as a district probate registrar is either (1) to hold a five year general qualification⁴ within the meaning of the Courts and Legal Services Act 1990⁵; or (2) to be a civil servant who has served at least five years in the Principal Registry of the Family Division or a district probate registry⁶. District probate registrars are officers of the Supreme Court and (except in the case of a temporary registrar)⁷ are deemed for all purposes to be employed in the civil service⁸. They hold office during Her Majesty's pleasure⁹.

District probate registrars are barred from legal practice¹⁰ and disqualified for membership of the House of Commons¹¹.

1 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

2 See the Supreme Court Act 1981 s 106(1); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 79.

3 See generally EXECUTORS AND ADMINISTRATORS.

4 As to holding such a qualification see PARA 530 note 1 ante.

5 Supreme Court Act 1981 s 88, Sch 2 Pt III para 12(1) (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

6 Supreme Court Act 1981 s 88, Sch 2 Pt III para 12(2) (as substituted: see note 5 supra). As to the Principal Registry of the Family Division see PARA 644 ante; as to district probate registries see PARA 645 ante; and as to persons who are civil servants see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 As to the appointment of temporary registrars see *ibid* s 91 (as amended); and PARA 661 ante.

8 See *ibid* s 93 (as amended); and PARA 650 ante.

9 *Ibid* s 92(7).

10 Courts and Legal Services Act 1990 s 75, Sch 11.

11 See PARA 647 note 4 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

659 District probate registrars

NOTE 5--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/660. Admiralty Registrar.

660. Admiralty Registrar.

The Admiralty Registrar is appointed by the Lord Chancellor with the concurrence of the Treasury as to salary¹. His powers and duties are discussed elsewhere in this work².

The qualification for appointment as Admiralty Registrar is to hold a seven year general qualification³ within the meaning of the Courts and Legal Services Act 1990⁴.

The Admiralty Registrar holds office during good behaviour and the Lord Chancellor has power to remove him from office for misbehaviour or inability to perform his duties⁵. His normal retirement age is 70 years⁶. His office is a qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993⁷.

After holding the office for at least three years the Admiralty Registrar is eligible for appointment as a circuit judge⁸.

The Admiralty Registrar is barred from legal practice⁹ and disqualified for membership of the House of Commons¹⁰. He must take the oath of allegiance and the judicial oath¹¹.

1 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

2 See generally SHIPPING AND MARITIME LAW vol 93 (2008) PARA 140 et seq.

3 As to holding such a qualification see PARA 530 note 1 ante.

4 Supreme Court Act 1981 s 88, Sch 2 Pt II para 5 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

- 5 See the Supreme Court Act 1981 92(4)-(6) (as amended); and PARA 651 ante.
- 6 See *ibid* s 92(1) (as amended); and PARA 651 ante.
- 7 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.
- 8 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.
- 9 Courts and Legal Services Act 1990 s 75, Sch 11.
- 10 See PARA 647 note 4 ante.
- 11 See PARA 652 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

660 Admiralty Registrar

TEXT AND NOTE 1--Any recommendation for appointment to the office of Admiralty Registrar in exercise of the function under the 1981 Act s 89(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

NOTE 4--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/661. District judges.

661. District judges.

For each district registry¹ the Lord Chancellor² must appoint a person who is a district judge for a county court district³ as a district judge of the High Court⁴; except that he may, if he thinks fit, appoint two or more persons who are district judges for a county court district to execute jointly the office of district judge in any district registry⁵. Where joint district judges are so appointed, the Lord Chancellor may give directions with respect to the division between them of the duties of the office of district judge⁶. On the death, resignation or removal of one of them, the Lord Chancellor may, as he thinks fit, either appoint in place of that person another person to be joint district judge, or give directions that the continuing district judge is to act as

sole district judge or (as the case may be) that the continuing district judges are to execute jointly the office of district judge⁷.

A district judge of any registry is capable of acting in any other district registry for a district judge of that registry; and, where a district judge is so acting, the district judge of the other registry may divide the duties of his office as he thinks fit between himself and the district judge acting for him⁸.

The district judges in district registries perform the same judicial and other functions as are performed by the masters in the Royal Courts of Justice⁹. Their powers and duties are discussed in detail elsewhere in this work¹⁰.

A district judge is an officer of the High Court and as such holds office during good behaviour¹¹; and the Lord Chancellor may remove him from office for misbehaviour or on account of inability to perform his duties¹². He must, however, vacate his office as district judge at such time as, for any cause whatever, he vacates his office as district judge for a county court district¹³. His office is a qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993¹⁴.

After holding the office for at least three years a district judge is eligible for appointment as a circuit judge¹⁵.

A district judge is barred from legal practice¹⁶ and disqualified for membership of the House of Commons¹⁷. He must take the oath of allegiance and the judicial oath¹⁸.

1 As to district registries see PARA 646 ante.

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 I.e. a district judge appointed under the County Courts Act 1984 s 6 (as amended): see PARA 728 post.

4 Supreme Court Act 1981 s 100(1) (ss 100, 101 amended by the Courts and Legal Services Act 1990 s 125(3), (7), Sch 18 para 40, Sch 20). District judges were formerly called 'district registrars': see the Courts and Legal Services Act 1990 s 74(1).

5 Supreme Court Act 1981 s 100(2) (as amended: see note 4 supra).

6 Ibid s 100(3)(a) (as amended: see note 4 supra).

7 Ibid s 100(3)(b) (as amended: see note 4 supra).

8 Ibid s 101(1) (as amended: see note 4 supra).

9 As to Queen's Bench and Chancery masters see PARAS 654-655 ante.

10 See CIVIL PROCEDURE vol 11 (2009) PARA 50.

11 See the Supreme Court Act 1981 s 92(4) (as amended), applied by s 100(4) (as amended: see note 4 supra); and PARA 651 ante.

12 See ibid s 92(5), (6), applied by s 100(4) (as amended: see note 4 supra); and PARA 651 ante.

13 Ibid s 100(4) (as amended: see note 4 supra). As to the normal retirement age for district judges see PARA 529 ante.

14 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.

15 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.

16 Courts and Legal Services Act 1990 s 75, Sch 11.

17 See the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III; and PARLIAMENT vol 78 (2010) PARA 908.

18 See PARA 652 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

661 District judges

TEXT AND NOTES 1-13--Replaced. The Lord Chief Justice, after consulting the Lord Chancellor (1) may assign a district judge to one or more district registries; (2) may change an assignment so as to assign the district judge to a different district registry or registries (or to no district registry): Supreme Court Act 1981 s 100(1) (now Senior Courts Act 1981 s 100(1)) (substituted by Constitutional Reform Act 2005 Sch 3 para 2(1)). A reference in any enactment or other instrument to the district judge of a district registry is a reference to any district judge assigned to the registry concerned: 1981 Act s 100(2). Every district judge is, by virtue of his office, capable of acting in any district registry whether or not assigned to it, but may do so only in accordance with arrangements made by or on behalf of the Lord Chief Justice: s 100(3). While a district judge is assigned to one or more district registries in accordance with s 100(1) he is a district judge of the High Court: s 100(4). Section 100 applies to a district judge holding office by virtue of an appointment made before the commencement of the Constitutional Reform Act 2005 Sch 3 para 2(1) (ie before 3 April 2006: see SI 2006/1014) as if he had been assigned to the district registry or registries for which he was appointed: 2005 Act Sch 3 para 2(2).

The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 1981 Act s 100(1): s 100(5) (added by Tribunals, Courts and Enforcement Act 2007 Sch 11 para 2).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/662. Deputy district judges.

662. Deputy district judges.

If it appears to the Lord Chancellor¹ that it is expedient to do so in order to facilitate the disposal of business in the High Court, he may appoint a person to be a deputy district judge in any district registry² during such period or on such occasions as the Lord Chancellor thinks fit³. A person is not qualified for appointment as a deputy district judge unless he is, or is qualified for appointment as, district judge for a county court district⁴; but he may be appointed as a deputy district judge if he would, but for his age, be qualified for appointment as a district

judge for a county court district and he has previously held the office of district judge for a county court district⁵. No such appointment may be such as to extend beyond the day on which the person in question attains the age of 75 years⁶.

The Lord Chancellor may pay a deputy district judge such remuneration and allowances out of money provided by Parliament as, with the concurrence of the Treasury, the Lord Chancellor determines⁷.

A deputy district judge, while acting under these provisions, has the same jurisdiction as the district judge⁸. Notwithstanding the expiry of the period of his appointment, a deputy district judge may validly continue to deal with, give judgment in or deal with any ancillary matter relating to any case with which he was concerned during that period⁹.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 As to district registries see PARA 646 ante.

3 Supreme Court Act 1981 s 102(1) (s 102 amended by the Courts and Legal Services Act 1990 s 125(3), (7), Sch 18 para 40, Sch 20). Deputy district judges were formerly called 'deputy district registrars': see the Courts and Legal Services Act 1990 s 74(1).

4 Supreme Court Act 1981 s 102(2) (as amended: see note 3 supra). As to the appointment of district judges for county court districts see the County Courts Act 1984 s 6 (as amended); and PARA 728 post.

5 Supreme Court Act 1981 s 102(3) (as amended: see note 3 supra).

6 Ibid s 102(3) (as amended: see note 3 supra; further amended by the Judicial Pensions and Retirement Act 1993 s 26(1), Sch 6 para 16). As to the normal retirement age of district judges see PARA 529 ante.

7 See the Supreme Court Act 1981 s 91(6), applied by s 102(5) (substituted by the Judicial Pensions and Retirement Act 1993 s 31(3), Sch 8 para 15(3)); and PARA 649 ante. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

8 Supreme Court Act 1981 s 102(4) (as amended: see note 3 supra). As to the jurisdiction of district judges see PARA 661 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 50.

9 See the Judicial Pensions and Retirement Act 1993 s 27(1); and PARA 536 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

662 Deputy district judges

TEXT AND NOTES 3, 7--The Lord Chancellor's functions under the 1981 Act ss 91(1), (1A) and (6), 102(1) are protected functions for the purposes of the Constitutional Reform

Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTES 3, 4--If it appears to the Lord Chancellor that it is expedient to do so in order to facilitate the disposal of business in the High Court, he may appoint a person to be a deputy district judge: 1981 Act s 102(1) (s 102(1), (1A)-(1C), (2) substituted by Tribunals, Courts and Enforcement Act 2007 Sch 11 para 3(2)). A person is qualified for appointment under the 1981 Act s 102(1) only if the person (1) is qualified for appointment as a district judge, or (2) holds, or has held, the office of district judge: s 102(1A). The Lord Chancellor may not appoint a person under s 102(1) without the concurrence of the Lord Chief Justice if the person (a) holds the office of district judge, or (b) ceased to hold the office of district judge within two years ending with the date when the appointment takes effect: s 102(1B). The Constitutional Reform Act 2005 s 85 (selection of certain office holders) does not apply to an appointment to which the 1981 Act s 102(1B) applies: s 102(1C). For effect see 2007 Act Sch 11 para 4. See further TEXT AND NOTE 8.

TEXT AND NOTE 3--Any appointment to the office of deputy district judge in exercise of the function under the 1981 Act s 102(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 2 (amended by 2007 Act Sch 11 para 15), in accordance with the 2005 Act ss 85-93, 96: see PARA 515B.18.

TEXT AND NOTES 5, 6--1981 Act s 102(3) further amended: 2007 Act Sch 11 para 3(3).

TEXT AND NOTE 8--The Lord Chief Justice, after consulting the Lord Chancellor (1) may assign a deputy district judge appointed under the 1981 Act s 102 to one or more district registries; (2) may change an assignment so as to assign the deputy district judge to a different district registry or registries (or to no district registry): s 102(4A) (s 102(4), (4A)-(4C), substituted by 2007 Act Sch 11 para 3(4)). A deputy district judge appointed under the 1981 Act s 102 and assigned to a district registry has, while acting under his assignment, the same jurisdiction as a district judge assigned to that registry: s 102(4B). Every deputy district judge appointed under s 102 is, by virtue of his office, capable of acting as a district judge in any district registry to which he is not assigned, but may act in a district registry to which he is not assigned only in accordance with arrangements made by or on behalf of the Lord Chief Justice: s 102(4C). For effect see 2007 Act Sch 11 para 4.

The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 1981 Act s 102(1B) or (4A): s 102(5A) (added by 2007 Act Sch 11 para 3(5)).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/663. Accountant General of the Supreme Court.

663. Accountant General of the Supreme Court.

The Lord Chancellor¹ has power to appoint such person as he thinks fit to the office in the Supreme Court of Accountant General of the Supreme Court and the person so appointed holds and vacates office in accordance with the terms of his appointment². The Office of Accountant General of the Supreme Court may, but need not, be held by the Permanent Secretary to the Lord Chancellor³. The Office of Public Trustee⁴ and the office of Accountant General of the Supreme Court may be held by one person⁵. If one person holds both offices then, if he ceases

to be the Public Trustee, he must also cease to be the Accountant General unless the Lord Chancellor otherwise directs⁶.

The Accountant General is paid such salary or fees as the Lord Chancellor determines with the consent of the Treasury⁷.

If a vacancy occurs in the office of Accountant General or the person appointed to hold the office is for any reason unable to act for any period, such person as the Lord Chancellor appoints as deputy in that office must, during the vacancy or that period, perform the functions of that office and any property vested in the Accountant General may accordingly be dealt with by the deputy in all respects as if it were vested in him instead⁸.

The powers and duties of the Accountant General are discussed in detail elsewhere in this work⁹.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Supreme Court Act 1981 s 97(1), (2) (s 97(2)-(5) substituted by the Public Trustee and Administration of Funds Act 1986 s 1(3), Schedule para 3).

3 Public Trustee and Administration of Funds Act 1986 s 1(2).

4 As to the Public Trustee see TRUSTS vol 48 (2007 Reissue) PARA 766 et seq. His office is now merged with that of the Official Solicitor: see PARA 667 post.

5 Public Trustee and Administration of Funds Act 1986 s 1(1).

6 Supreme Court Act 1981 s 97(4) (as substituted: see note 2 supra).

7 Ibid s 97(3) (as substituted: see note 2 supra).

8 Ibid s 97(5) (as substituted: see note 2 supra).

9 See CIVIL PROCEDURE vol 12 (2009) PARA 1548 et seq.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/664. Conveyancing counsel.

664. Conveyancing counsel.

The conveyancing counsel of the Supreme Court are appointed by the Lord Chancellor¹, and are not to be more than six, nor less than three in number². In order to be qualified for appointment they must have a 10 year High Court qualification³ within the meaning of the Courts and Legal Services Act 1990 and have practised as conveyancing counsel for not less than 10 years⁴.

The court may direct conveyancing counsel to investigate and prepare a report on the title of any land or to draft any document and may take such a report into account when it decides the issue in question⁵. The court may specify a particular conveyancing counsel but if it does not do so, the work is distributed in accordance with arrangements made by the chief Chancery master⁶. Their fees for any such work are assessed by the court⁷.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Supreme Court Act 1981 s 131(2).

3 As to when a person holds a High Court qualification see PARA 515 note 11 ante.

4 Supreme Court Act 1981 s 131(1) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 48). As to conveyancing counsel see further SALE OF LAND vol 42 (Reissue) PARA 136.

5 See CPR 40.18(1), (2); and CIVIL PROCEDURE vol 12 (2009) PARA 1216.

6 See *Practice Direction--1. Court's Powers in Relation to Land. 2. Conveyancing Counsel of the Court* PD 40D paras 6.1, 6.2; and CIVIL PROCEDURE vol 12 (2009) PARA 1216.

7 See *Practice Direction about Costs* PD 43-48 para 8.8(1); and CIVIL PROCEDURE vol 12 (2009) PARA 1750.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

664 Conveyancing counsel

TEXT AND NOTES 2, 4--1981 Act s 131 further amended: Constitutional Reform Act 2005 Sch 4 para 145.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/665. Examiners of the court.

665. Examiners of the court.

A sufficient number of barristers or solicitor-advocates, who have been practising for at least three years, are appointed by the Lord Chancellor¹ to act as examiners of the court². Their

duties are to conduct examinations of and take depositions from witnesses, and are discussed in more detail elsewhere in this work³.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 CPR 34.15(1), (2).

3 See CIVIL PROCEDURE vol 11 (2009) PARA 992 et seq.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/666. Registrars and other officers acting in bankruptcy and in the Companies Court.

666. Registrars and other officers acting in bankruptcy and in the Companies Court.

The registrars in bankruptcy of the High Court are appointed by the Lord Chancellor with the concurrence of the Treasury as to numbers and salaries¹; and he must appoint one of them as Chief Bankruptcy Registrar, with such additional salary in respect of that appointment as the Lord Chancellor may with the like concurrence determine². Their powers and duties are discussed elsewhere in this work³.

The qualification for appointment as a registrar in bankruptcy of the High Court is to hold a seven year general qualification⁴ within the meaning of the Courts and Legal Services Act 1990⁵. Registrars in bankruptcy hold office during good behaviour and the Lord Chancellor has power to remove them from office for misbehaviour or inability to perform their duties⁶. Their normal retirement age is 70 years⁷ and they hold offices which are qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993⁸.

Registrars in bankruptcy of the High Court who have held the office for at least three years are eligible for appointment as circuit judges⁹. They are barred from legal practice¹⁰ and disqualified for membership of the House of Commons¹¹.

The official receivers who act in bankruptcy and in winding up are officers of the Department of Trade and Industry¹², but they are also officers of the court to which they are attached¹³.

Trustees in bankruptcy¹⁴ and a liquidator in the winding up of a company by the court¹⁵ are officers of the court for certain purposes. They are not, however, whole-time officers, but are appointed for the purpose of the particular bankruptcy¹⁶ or winding up¹⁷, and are remunerated normally by a percentage or commission based on the amounts realised and distributed¹⁸.

1 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

2 Supreme Court Act 1981 s 89(3)(d).

3 See generally BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY. Registrars in bankruptcy must take the oath of allegiance and the judicial oath: see PARA 652 ante.

4 As to when a person holds such a qualification see PARA 530 note 1 ante.

5 Supreme Court Act 1981 s 88, Sch 2 Pt II para 7 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

6 See the Supreme Court Act 1981 92(4)-(6) (as amended); and PARA 651 ante.

7 See *ibid* s 92(1) (as amended); and PARA 651 ante.

8 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.

9 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.

10 Courts and Legal Services Act 1990 s 75, Sch 11.

11 See PARA 647 note 4 ante.

12 The Secretary of State may (subject to the approval of the Treasury as to numbers) appoint persons to the office of official receiver, and a person appointed to that office is paid out of money provided by Parliament such salary as the Secretary of State may with the concurrence of the Treasury direct, holds office on such other terms and conditions as the Secretary of State may with the concurrence of the Treasury direct, and may be removed from office by a direction of the Secretary of State: see the Insolvency Act 1986 s 399(2); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

13 Where a person holds the office of official receiver, the Secretary of State must from time to time attach him either to the High Court or to a county court having insolvency jurisdiction, and there must at all times be at least one official receiver attached to the High Court and at least one attached to each such county court, although the same official receiver may be attached to two or more different courts: see *ibid* s 399(3), (5). In the exercise of the functions of his office a person holding the office of official receiver must act under the general directions of the Secretary of State and is also an officer of the court in relation to which he exercises those functions: see s 400(2); and see further BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

14 As to trustees in bankruptcy see *ibid* ss 292-300 (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY. They must be qualified insolvency practitioners: see s 292(2); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

15 The official receiver may act as liquidator or he may apply to the Secretary of State to appoint another liquidator: see *ibid* s 137(1); and COMPANY AND PARTNERSHIP INSOLVENCY. In certain circumstances the liquidator may be nominated by the creditors or appointed by the court: see ss 138, 139; and COMPANY AND PARTNERSHIP INSOLVENCY.

16 Trustees in bankruptcy may be appointed by the creditors, by the Secretary of State or by the court, depending on the circumstances: see *ibid* s 292(1); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

17 As to winding up see generally COMPANY AND PARTNERSHIP INSOLVENCY.

18 As to the remuneration of trustees in bankruptcy and liquidators see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

666 Registrars and other officers acting in bankruptcy and in the Companies Court

TEXT AND NOTE 1--Any recommendation for appointment to the office of registrar in bankruptcy of the High Court in exercise of the function under the 1981 Act s 89(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

TEXT AND NOTE 2--Supreme Court Act 1981 s 89(3) (now Senior Courts Act 1981 s 89(3)) substituted: 2005 Act Sch 3 para 3(4). See further s 85, Sch 14 Pt 1; and PARA 515B.18.

NOTE 5--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/667. Official Solicitor.

667. Official Solicitor.

Since 1875 the officer formerly known as the Solicitor to the Suitors' Fund, and then as the Solicitor to the High Court of Chancery, has borne the title of Official Solicitor to the Supreme Court¹. He no longer has any duties to discharge with reference to funds in court. On 1 April 2001 his office was merged with that of the Public Trustee².

The Official Solicitor is appointed by the Lord Chancellor³ and is paid, out of money provided by Parliament, such salary as the Lord Chancellor may determine with the concurrence of the Treasury⁴. He has all such powers and performs such duties as may for the time being be conferred or imposed on the holder of that office by or under the Supreme Court Act 1981 or any other Act, or by or in accordance with any direction given⁵ by the Lord Chancellor⁶. He has the right to conduct litigation in relation to any proceedings⁷ and may, in particular, do so in order to protect the interests of children and other vulnerable persons⁸. The Official Solicitor may issue practice notes giving guidance on certain matters⁹.

The qualification for appointment to the position of Official Solicitor is to hold a 10 year general qualification¹⁰ within the meaning of the Courts and Legal Services Act 1990¹¹. He is disqualified for membership of the House of Commons¹².

It has been held that where the court refers a matter to the Official Solicitor, the instructions, if not inserted in the order, should be embodied in some document, or at least reduced to writing¹³.

1 See the Order of the Lord Chancellor dated 6 November 1875.

2 See *Making Changes: The Future of the Public Trust Office (The Way Forward and an Analysis of the Consultation)* (available at www.publictrust.gov.uk). As to the Public Trustee see TRUSTS vol 48 (2007 Reissue) PARA 766 et seq.

3 Supreme Court Act 1981 s 90(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Ibid s 90(2). The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

5 Ie whether given before or after 1 January 1982 (ie the commencement date of the Supreme Court Act 1981: see s 153(2)): s 90(3)(b).

6 Ibid s 90(3).

7 Ibid s 90(3A) (s 90(3A), (3B) added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 39). When acting as Official Solicitor a person who would otherwise have the right to conduct litigation by virtue of the Courts and Legal Services Act 1990 s 28(2)(a) (see LEGAL PROFESSIONS vol 65 (2008) PARA 498) is to be treated as having acquired that right solely by virtue of the Supreme Court Act 1981 s 90(3A) (as so added): s 90(3B) (as so added). As to rights to conduct litigation see PARA 332 ante; and LEGAL PROFESSIONS.

⁸ It is not his duty or function to institute wardship proceedings: *Re D (a minor) (Wardship: Sterilisation)* [1976] Fam 185 at 197, [1976] 1 All ER 326 at 336, CA. The court has no jurisdiction to deliver a child into the custody of the Official Solicitor in order that he may consent to blood tests where a mother with sole care and control of the child does not consent to such samples of the child's blood being taken for the purposes of determining paternity: *Re O and Re J (children)* [2000] All ER (D) 67, Fam D. The Official Solicitor has power to appeal to the Court of Appeal in any case involving a mental patient: *Practice Direction* [1989] 1 All ER 764, [1989] 1 WLR 133. For examples of recent cases in which the Official Solicitor has acted see *NHS Trust v B* [2002] All ER (D) 44 (Mar) (Official Solicitor invited to represent the interests of a patient in a permanent vegetative state on an application by the hospital trust to withdraw artificial nutrition and hydration from him); *Re B (a minor) (adoption: natural parent)* [2001] UKHL 70, [2002] 1 All ER 641, [2001] 1 WLR 258 (Official Solicitor, acting as the child's guardian, opposing father's application on grounds that an order for adoption, which would end the mother's relationship with the child, was not an order which could be said to safeguard and promote the child's welfare); *Re A (children) (conjoined twins: surgical separation)* [2001] Fam 147, [2000] 4 All ER 961, CA (hospital seeking order that operation to separate conjoined twins, which would have the inevitable effect of causing one twin's death, would be lawful; Official Solicitor instructing counsel to represent weaker twin). See generally CHILDREN AND YOUNG PERSONS; MEDICAL PROFESSIONS; MENTAL HEALTH.

9 See *Practice Note (Official Solicitor): declaratory proceedings: medical and welfare decisions for adults who lack capacity* [2001] 2 FCR 569, indorsed by the President of the Family Division in *Practice Direction (incapacitated adults: declaratory proceedings)* [2002] 1 All ER 794, [2002] 1 WLR 325, para 3.

10 As to when a person holds such a qualification see PARA 530 note 1 ante.

11 Supreme Court Act 1981 s 88, Sch 2 Pt I para 2 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

12 See PARA 647 note 4 ante.

13 *Re Caton, Vincent v Vatcher* (1911) 55 Sol Jo 313.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

667 Official Solicitor

NOTE 7--For 'Courts and Legal Services Act 1990 s 28(2)(a)' read 'fact that he is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act)' (see LEGAL PROFESSIONS vol 65 (2008) PARA 512): s 90(3B) (amended by Legal Services Act 2007 Sch 21 para 47).

NOTE 9--*Practice Note* superseded by *Practice Note (Official Solicitor: Declaratory Proceedings: Medical and Welfare Decisions for Adults who Lack Capacity)* [2006] 2 FLR 272.

NOTE 11--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/668. Master of the Court of Protection.

668. Master of the Court of Protection.

The office of master of the Court of Protection is an office of the Supreme Court, appointment to which is made by the Lord Chancellor with the concurrence of the Treasury as to numbers and salaries¹. The qualification for such appointment is that the relevant person holds a seven year general qualification² within the meaning of the Courts and Legal Services Act 1990³. The powers and duties of a master of the Court of Protection are discussed elsewhere in this work⁴.

A master of the Court of Protection holds office during good behaviour and the Lord Chancellor has power to remove him from office for misbehaviour or inability to perform his duties⁵. His normal retirement age is 70 years⁶. His office is a qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993⁷.

After holding the office for at least three years a master of the Court of Protection is eligible for appointment as a circuit judge⁸.

A master of the Court of Protection is barred from legal practice⁹ and disqualified for membership of the House of Commons¹⁰.

1 See the Supreme Court Act 1981 s 89(1); and PARA 648 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

2 As to when a person holds such a qualification see PARA 530 note 1 ante.

3 Supreme Court Act 1981 s 88, Sch 2 Pt II para 11 (Sch 2 substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 49).

4 See generally MENTAL HEALTH.

5 See the Supreme Court Act 1981 92(4)-(6) (as amended); and PARA 651 ante.

- 6 See *ibid* s 92(1) (as amended); and PARA 651 ante.
- 7 See the Judicial Pensions and Retirement Act 1993 s 1(6), Sch 1 Pt II; and PARA 539 ante.
- 8 See the Courts Act 1971 s 16(3)(c), Sch 2 Pt IA (as respectively substituted and added); and PARA 522 ante.
- 9 Courts and Legal Services Act 1990 s 75, Sch 11.
- 10 See PARA 647 note 4 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

668 Master of the Court of Protection

TEXT AND NOTE 1--Any recommendation for appointment to the office of master of the Court of Protection in exercise of the function under the 1981 Act s 89(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

NOTE 3--Supreme Court Act 1981 Sch 2 (now Senior Courts Act 1981 Sch 2) now substituted by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 13(3). See also Sch 10 para 13(4), (5).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/669. Permanent Secretary to the Lord Chancellor.

669. Permanent Secretary to the Lord Chancellor.

The previous statutory provisions relating to the qualification for appointment and tenure of office of a person holding the office of Permanent Secretary to the Lord Chancellor and Clerk of the Crown in Chancery¹ have been repealed by the Supreme Court (Offices) Act 1997²; but this repeal is expressed not to apply to the person who held that office on 17 December 1997 when the Act came into force³.

This office may be combined with that of Accountant General⁴.

¹ See the Supreme Court Act 1981 s 89(1), Sch 2 Pt I para 1 (as substituted and now repealed) which provided that a person appointed to such office was to have a 10 year general qualification within the meaning of the Courts and Legal Services Act 1990 or to be a civil servant who had served at least five years in the Lord Chancellor's Department; and by virtue of which the Supreme Court Act 1981 s 92 (as amended) (tenure of office: see PARA 651 ante) applied to such a person.

2 Supreme Court (Offices) Act 1997 s 1(1).

3 Ibid s 1(2).

4 See PARA 650 ante.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

669 Permanent Secretary to the Lord Chancellor

TEXT AND NOTES 1-3--1997 Act s 1 repealed: Statute Law (Repeals) Act 2004.

NOTE 1--Supreme Court Act 1981 s 89(1) (now Senior Courts Act 1981 s 89(1)) amended: Constitutional Reform Act 2005 Sch 3 para 3(2) (in force for certain purposes: see SI 2006/1014). The maximum number of appointments under the 1981 Act s 89(1) is such as may be determined from time to time by the Lord Chancellor with the concurrence of the Treasury: s 89(1A) (added by Constitutional Reform Act 2005 Sch 3 para 3(3)) (in force for certain purposes: see SI 2006/1014). A person appointed under the 1981 Act s 89(1) is to be paid such salary, and a person appointed to a senior office is to be paid such additional salary, as may be determined by the Lord Chancellor with the concurrence of the Treasury: s 89(7A) (s 89(7A), (7B) added by Constitutional Reform Act 2005 Sch 3 para 3(5)) (in force for certain purposes: see SI 2006/1014). A salary payable under or by virtue of the 1981 Act s 89 (1) may in any case be increased, but (2) may not, in the case of a salary payable in respect of an office listed in Sch 2 Pt 2 col 1 or of a senior office, be reduced, by a determination or further determination under s 89: s 89(7B) (in force for certain purposes: see SI 2006/1014).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/670. Court officers in the Civil Appeals Office.

670. Court officers in the Civil Appeals Office.

A court officer¹ assigned to the Civil Appeals Office² who is a barrister or a solicitor may, with the consent of the Master of the Rolls³, exercise the jurisdiction of the Court of Appeal with regard to:

- 265 (1) any matter incidental to any proceedings in the Court of Appeal;
- 266 (2) any other matter where there is no substantial dispute between the parties;
- and

267 (3) the dismissal of an appeal or application where a party has failed to comply with any order, rule or practice direction⁴,

and may make decisions without a hearing⁵. When the Head of the Civil Appeals Office acts in a judicial capacity pursuant to this provision, he is known as 'master'. Other eligible officers may also be designated by the Master of the Rolls to exercise judicial authority under this provision and are then to be known as 'deputy masters'⁶.

The former office of Registrar of Civil Appeals was abolished by the Access to Justice Act 1999⁷.

1 For the meaning of 'court officer' see PARA 607 note 14 ante; and as to court staff generally see PARA 514 ante.

2 As to the Civil Appeals Office see PARA 641 ante.

3 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 See CPR 52.16(1), (2); and CIVIL PROCEDURE vol 12 (2009) PARA 1711.

5 See CPR 52.16(4).

6 See *Practice Direction--Appeals* PD 52 para 15.2; and CIVIL PROCEDURE vol 12 (2009) PARA 1711. As to the matters which may not be decided by a court officer under CPR 52.16 see CPR 52.16(3); and CIVIL PROCEDURE vol 12 (2009) PARA 1711.

7 See the Access to Justice Act 1999 s 70.

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

670 Court officers in the Civil Appeals Office

NOTE 7--1999 Act s 70 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/5. THE [SENIOR COURTS] OF ENGLAND AND WALES/(6) SUPREME COURT OFFICERS/(ii) Appointments to Specific Offices/671. Secretaries and clerks to judges.

671. Secretaries and clerks to judges.

A clerk and a secretary are attached to each of the following judges of the Supreme Court, namely the Lord Chief Justice¹, the Master of the Rolls², the President of the Family Division³ and

the Vice-Chancellor⁴. A clerk is attached to each of the Lords Justices of Appeal⁵ and the puisne judges of the High Court⁶. Any such clerk or secretary is appointed by the Lord Chancellor⁷ and, if not already employed in the civil service of the state, is deemed for all purposes to be so employed⁸.

If at any time it appears to any of the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor that it is desirable that there should be attached to him a legal secretary (that is to say a secretary with legal qualifications) in addition to the secretary provided for as mentioned above, he may, with the concurrence of the Lord Chancellor, appoint a person who has a general qualification⁹ within the meaning of the Courts and Legal Services Act 1990 as his legal secretary¹⁰. Such an appointment may be on either a full-time or a part-time basis; and a person appointed by a judge as his legal secretary holds and vacates that office in accordance with such terms as the judge may, with the concurrence of the Lord Chancellor, determine when making the appointment, except as regards remuneration¹¹. A person appointed under these provisions is not, however, to be treated as employed in the civil service of the state by reason only of that appointment¹².

1 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

2 As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

3 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

4 Supreme Court Act 1981 s 98(1). As to the Vice-Chancellor see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

5 As to the Lords Justices of Appeal see PARA 637 ante.

6 Supreme Court Act 1981 s 98(2). As to the puisne judges of the High Court see PARAS 515, 602, 619 ante.

7 Ibid s 98(3)(a). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

8 Ibid s 98(3)(b). As to the civil service see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 As to when a person holds such a qualification see PARA 530 note 1 ante.

10 Supreme Court Act 1981 s 98(4) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 47).

11 Supreme Court Act 1981 s 98(5). If the Lord Chancellor so determines in his case, a person so appointed must be paid out of money provided by Parliament such remuneration as the Lord Chancellor may, with the concurrence of the Treasury, determine: s 98(6)(b). The statutory wording is 'with the concurrence of the Minister for the Civil Service' (as to whom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427); but by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, this is now to be construed as a reference to the concurrence of the Treasury.

12 Supreme Court Act 1981 s 98(6)(a).

UPDATE

601-671 The [Senior Courts] of England and Wales

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see 2005 Act Sch 11 para

1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': 2005 Act Sch 11 para 26.

As to the establishment of the Supreme Court of the United Kingdom see PARA 601.

671 Secretaries and clerks to judges

TEXT AND NOTES--Reference to the President of the Family of the Family Division and the Vice-Chancellor is now to the President of the Queen's Bench Division, the President of the Family Division, and the Chancellor of the High Court: 1981 Act s 98(1) (amended by Constitutional Reform Act 2005 Sch 4 para 142).

The Lord Chancellor's functions under the 1981 Act s 98 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(1) ORIGIN AND PROCEDURE/701. The County Courts Acts.

6. COUNTY COURTS

(1) ORIGIN AND PROCEDURE

701. The County Courts Acts.

County courts as at present constituted are creatures of statute, and as such were established by the County Courts Act 1846¹. Their jurisdiction was much enlarged and their practice was amended by a series of subsequent County Courts Acts², now replaced by the County Courts Act 1984, which, when it came into operation on 1 August 1984³, consolidated and repealed the enactments then in force with the exception of the provisions of the County Courts Act 1959 dealing with funds in court⁴ which were repealed and replaced by provisions of the Administration of Justice Act 1982⁵. Further amendments were effected by, in particular, the Administration of Justice Act 1985⁶, the Courts and Legal Services Act 1990⁷, the Judicial Pensions and Retirement Act 1993⁸ and the Civil Procedure Act 1997⁹. The 1984 Act was also amended by the High Court and County Courts Jurisdiction Order 1991¹⁰ and the Civil Procedure (Modification of Enactments) Order 1998¹¹.

The limits of the present jurisdiction of county courts are stated subsequently and their special jurisdiction under a large number of statutes is discussed both subsequently and elsewhere in this work¹².

Unless the contrary intention appears, the expression 'county court' in every Act or Order in Council passed or made after 1846 means as regards England and Wales a court held for a district under the County Courts Act 1984¹³. The general rules of interpretation of words are in force in the county courts and special provisions are made for the interpretation of particular words used in the County Courts Act 1984¹⁴.

Under the Courts Act 1971 the Lord Chancellor may constitute on a permanent or temporary basis one or more advisory committees to advise him on such questions relating to the county courts as he may from time to time refer to them¹⁵.

¹ The preamble to the County Courts Act 1846 (repealed) stated very usefully the prior legislation on the subject. At common law there originally existed a local county court exercising a considerable jurisdiction in

respect of land and small debts. It fell into disuse from the time of Henry II, owing to the establishment of assize courts. From the reign of James I onwards efforts were made to supply its place by the creation of local small debt courts, under the name of 'courts of request', and these courts were made the basis of the statutory county courts in 1846.

2 References in any enactment or document to a county court constituted under the County Courts Act 1888 or the County Courts Act 1934 or the County Courts Act 1959 (all repealed) are to be construed as references to a county court constituted under the County Courts Act 1984 and anything done or proceedings taken in respect of any action or matter whatsoever before the commencement of the 1984 Act (see the text and note 3 *infra*) in a county court under any of those enactments is deemed to have been done or taken in a county court constituted under the 1984 Act: County Courts Act 1984 s 148(2), Sch 3 para 5. Any document referring to any former enactment relating to county courts (ie any enactment repealed by the County Courts Act 1959, by the County Courts Act 1934 or by the County Courts Act 1888 (all repealed)) is to be construed as referring to the corresponding enactment in the 1984 Act: County Courts Act 1984 Sch 3 para 6. Without prejudice to any express amendment made by the 1984 Act, a reference in an enactment or other document, whether express or implied, to an enactment repealed by that Act is, unless the context otherwise requires, to be construed as, or as including, a reference to that Act or to the corresponding provision of that Act; but nothing in the County Courts Act 1984 Sch 3 (as amended) is to be taken as prejudicing the operation of the provisions of the Interpretation Act 1978 as respects the effect of repeals: County Courts Act 1984 Sch 3 paras 11, 12.

3 See *ibid* s 150.

4 Ie the County Courts Act 1959 ss 168-170 (repealed).

5 See now the Administration of Justice Act 1982 Pt VI (ss 38-48) (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1548 *et seq*.

6 Ie in particular as to the probate jurisdiction of county courts (see the Administration of Justice Act 1985 ss 51, 67, Schs 7, 8) and the register of county court judgments and orders (see ss 54, 125, Sch 17).

7 The Courts and Legal Services Act 1990 made a number of amendments to the County Courts Act 1984, particularly as a consequence of the introduction by the Courts and Legal Services Act 1990 s 74 of district judges in place of county court registrars (see PARA 728 *post*); provision was also made by the 1990 Act for more flexible allocation of business between the High Court and county courts (see note 10 *infra*; and PARA 579 *ante*, para 721 *post*). The relevant amendments are noted in this title as appropriate.

8 As to the general provision made by the Judicial Pensions and Retirement Act 1993 see PARA 535 *et seq ante*.

9 The Civil Procedure Act 1997 introduced wide-ranging reforms in civil procedure, for the first time providing for common rules of procedure applicable to most civil proceedings in the High Court and county courts. See further PARA 575 *ante*, para 702 *post*; and CIVIL PROCEDURE vol 11 (2009) PARA 24 *et seq*.

10 Ie the High Court and County Courts Jurisdiction Order 1991, SI 1991/724 (as amended), made under the Courts and Legal Services Act 1990 s 1, which provides new criteria for determining where proceedings are to be commenced and tried and where judgments are to be enforced: see PARA 579 *ante*, para 721 notes 11-12 *post*.

11 Ie the Civil Procedure (Modification of Enactments) Order 1998, SI 1998/2940, which amends the County Courts Act 1984 s 53 (disclosure of documents against non-party: see CIVIL PROCEDURE vol 11 (2009) PARA 550), repeals s 47 (former specific right of child to bring proceedings without a next friend (now known as a litigation friend) for wages due to him) and modifies s 52 (pre-action disclosure: see CIVIL PROCEDURE vol 11 (2009) PARA 111).

12 See PARA 712 *post* (jurisdiction in contract and tort), para 719 *post* (jurisdiction in equity). The many special jurisdictions of county courts under statutes relating to particular subjects are discussed in the titles of this work relating to those subjects.

13 Interpretation Act 1978 s 5, Sch 1 (definition amended by the County Courts Act 1984 s 148(1), Sch 2 para 68). In relation to Northern Ireland, the relevant date in relation to Acts etc is 1889 and 'county court' means a court held for a division under the County Courts (Northern Ireland) Order 1980, SI 1980/397: Interpretation Act 1978 Sch 1 (definition amended by the County Courts (Northern Ireland) Order 1980, SI 1980/397, art 68(2), Sch 1 Pt II). County courts in Northern Ireland do not fall within the scope of this title. As to the legal system in Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 82.

14 See the County Courts Act 1984 s 147 (as amended). The relevant definitions are set out in this title where appropriate.

15 See the Courts Act 1971 s 30; and PARA 501 ante.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(1) ORIGIN AND PROCEDURE/702. Rules of procedure.

702. Rules of procedure.

The general procedure of county courts is regulated by the County Courts Act 1984, the Civil Procedure Act 1997 and the Civil Procedure Rules 1998 ('CPR')¹ and the practice directions supplementing the CPR². Certain of the former County Court Rules 1981³ are reproduced and re-enacted, in a modified form, by Schedule 2 to the CPR⁴. The power to make these rules has already been discussed⁵.

The CPR do not apply to certain insolvency, probate, mental health, family or adoption proceedings in county courts⁶.

It has been held that county courts have an inherent jurisdiction to regulate their own procedures provided that the exercise of this power is not inconsistent with statute or statutory rules⁷.

1 See the Civil Procedure Rules 1998, SI 1998/3132 (as amended), which came into force on 26 April 1999: see CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq.

2 See PARA 575 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 30 et seq.

3 See the County Court Rules 1981, SI 1981/1687 (revoked subject to transitional provisions). Those rules were made under the County Courts Act 1959 (repealed) but continued in force under the County Courts Act 1984 by virtue of s 148(2), Sch 3 para 6 (see PARA 701 note 2 ante) and of the Interpretation Act 1978 s 17(2) (b).

4 See CPR 50, Sch 2 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 30 note 20.

5 See PARA 575 ante.

6 See PARA 575 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 32. As to family proceedings rules see PARA 576 ante.

7 See *Langley v North West Water Authority* [1991] 3 All ER 610, [1991] 1 WLR 697, CA. Subject to specific limitations and restrictions, county courts have jurisdiction to grant any remedy or relief which the High Court could grant in the exercise of its inherent jurisdiction: see PARA 711 post.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(1) ORIGIN AND PROCEDURE/703. Prescribed forms.

703. Prescribed forms.

There are three classes of forms referred to in the Civil Procedure Rules ('CPR'); new or N forms¹, practice forms² and county court forms³. Practice forms are those forms previously prescribed in the High Court or approved by the masters of the Queen's Bench and the Chancery Division, and thus are not relevant to county court practice⁴. The county court forms are those forms that were prescribed or practice forms in the county courts before 26 April 1999 and that will continue in use on or after that date in amended form to ensure consistency with the new rules⁵.

The use of these prescribed forms, and the extent to which variations of them are permitted, is discussed elsewhere in this work⁶.

1 See *Practice Direction--Forms* PD 4 para 1.3, Table 1.

2 See *Practice Direction--Forms* PD 4 para 1.3, Table 2.

3 See *Practice Direction--Forms* PD 4 para 1.3, Table 3.

4 See *Practice Direction--Forms* PD 4 para 4.1, Table 2.

5 See *Practice Direction--Forms* PD 4 para 5.1, Table 3. It was held in relation to previous county court forms that they need not be technically and literally followed but that they must be adhered to in substance and that any material deviation would render the proceedings irregular: *McIntosh v Simpkins* [1901] 1 KB 487, CA; *Lumley v Osborne* [1901] 1 KB 532, DC. However, if an application is required by statute to be in a prescribed form, it has been held that strict adherence to that form is a condition precedent to the validity of the application: *British and Colonial Furniture Co Ltd v William McIlroy Ltd* [1952] 1 KB 107, [1952] 1 All ER 12; cf *Osborne v Snook* [1953] 1 All ER 332, [1953] 1 WLR 322, CA. See also *McIlraith v Grady* [1968] 1 QB 468, [1967] 3 All ER 625, CA (committal order had to set out particular matter of contempt, as the form so stated).

6 See CIVIL PROCEDURE vol 11 (2009) PARA 14.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(1) ORIGIN AND PROCEDURE/704. Payment and application of fees, fines etc; funds rules.

704. Payment and application of fees, fines etc; funds rules.

All fees, forfeitures and fines payable under the County Courts Act 1984¹ and any penalty to an officer² of a county court under any other Act must be paid to officers designated by the Lord Chancellor³ and dealt with by them in such manner as the Lord Chancellor, after consultation with the Treasury, may direct⁴.

The Lord Chancellor, with the concurrence of the Treasury, must from time to time make such rules as he thinks fit for securing the balances and other sums of money in the hands of any officers of a county court, and for the due accounting for and application of those balances and sums⁵.

The Court Funds Rules 1987⁶ have been made by the Lord Chancellor with Treasury concurrence to provide for the payment of interest on funds in court and their administration and management⁷. These rules, which apply to any county court, including a judge or district judge not exercising his powers in open court⁸, are discussed elsewhere in this work⁹.

1 Payment of any fine imposed by any court under the County Courts Act 1984 may be enforced upon the order of the judge in like manner as payment of a debt adjudged by the court to be paid may be enforced under that Act (see CIVIL PROCEDURE vol 12 (2009) PARA 1223 et seq) or as payment of a sum adjudged to be paid by a conviction of a magistrates' court may be enforced under the Magistrates' Courts Act 1980 (disregarding s 81(1) (as amended)) (see MAGISTRATES): County Courts Act 1984 s 129. For the meaning of 'the judge' see PARA 724 the text to note 11 post.

2 For the meaning of 'officer' see PARA 726 post.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. The Lord Chancellor may appoint auditors and other officers to control the accounts of county courts: see PARA 501 the text and note 30 ante.

4 County Courts Act 1984 s 130(1). This does not apply to fines imposed on summary conviction or to so much of a fine as is applicable under s 55(4) (penalty for neglecting or refusing to give evidence: see CIVIL PROCEDURE vol 11 (2009) PARA 1016) to indemnify a party injured: s 130(2).

5 Ibid s 130(3).

6 Ie the Court Funds Rules 1987, SI 1987/821 (as amended): see CIVIL PROCEDURE vol 12 (2009) PARA 1548 et seq.

7 See CIVIL PROCEDURE vol 12 (2009) PARA 1550.

8 See the Court Funds Rules 1987, SI 1987/821, r 2(2) (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1550.

9 See CIVIL PROCEDURE vol 12 (2009) PARA 1548 et seq.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

704 Payment and application of fees, fines etc; funds rules

TEXT AND NOTES 4, 5--The Lord Chancellor's functions under the 1984 Act s 130 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(1) ORIGIN AND PROCEDURE/705. Fees orders.

705. Fees orders.

With the concurrence of the Treasury the Lord Chancellor may from time to time make orders by statutory instrument as to the fees to be paid on any proceedings which are for the time being authorised to be taken in a county court¹. The order must be laid before both Houses of Parliament².

A copy of the fees orders for the time being in force must be posted in some conspicuous place in every court-house and district judge's office³.

The County Courts Fees Order 1999⁴ currently provides for fees in most proceedings in county courts, except for family proceedings⁵, and for exemption from or refund of the fees in certain cases⁶. County court fees are discussed elsewhere in this work⁷.

1 County Courts Act 1984 s 128(1). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Ibid s 128(2).

3 See ibid s 128(3).

4 I.e the County Court Fees Order 1999, SI 1999/689 (as amended), which came into force on 26 April 1999: art 1. The order is set out in *The Civil Court Practice*.

5 See the County Court Fees Order 1999, SI 1999/689, art 4.

6 See ibid arts 5-7 (as amended); and CIVIL PROCEDURE.

7 See CIVIL PROCEDURE vol 11 (2009) PARA 87.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005

s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

705 Fees orders

TEXT AND NOTES 1-3--Repealed: Courts Act 2003 Sch 8 para 276, Sch 10.

TEXT AND NOTES 4-6--SI 1999/689 replaced by Civil Proceedings Fees Order 2008, SI 2008/1053: see CIVIL PROCEDURE vol 11 (2009) PARA 87.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(1) ORIGIN AND PROCEDURE/706. Legal representation in county courts.

706. Legal representation in county courts.

A county court has the same power to enforce an undertaking given by a solicitor in relation to any proceedings in that court as the High Court has to enforce an undertaking so given in relation to any proceedings in the High Court¹.

No person other than a legal representative² or a person exercising a right of audience or a right to conduct litigation³ by virtue of an order made by the Lord Chancellor⁴ is entitled to have or recover any fee or reward for acting on behalf of a party in proceedings in a county court⁵.

After consulting the Senior Presiding Judge⁶, the Lord Chancellor may by order provide that there shall be no restriction on the persons who may exercise rights of audience, or rights to conduct litigation, in relation to proceedings in a county court of such a kind as may be specified in the order⁷. The power to make such an order may only be exercised in relation to proceedings:

- 268 (1) for the recovery of amounts due under contracts for the supply of goods or services;
- 269 (2) for the enforcement of any judgment or order of any court or the recovery of any sum due under any such judgment or order;
- 270 (3) on any application under the Consumer Credit Act 1974;
- 271 (4) in relation to domestic premises⁸; or
- 272 (5) dealt with as a small claim in accordance with rules of court⁹,

or any category (determined by reference to such criteria as the Lord Chancellor considers appropriate) of such proceedings¹⁰. Where such an order is made, the statutory prohibition on an unqualified person acting as a solicitor¹¹ ceases to apply in relation to proceedings of the kind specified in the order¹².

Where a county court is of the opinion that a person who would otherwise have a right of audience by virtue of such an order is behaving in an unruly manner in any proceedings, it may refuse to hear him in those proceedings¹³. It must, where exercising this power, specify the conduct which warranted its refusal¹⁴.

Where, in any proceedings in a county court, a person is exercising a right of audience or a right to conduct litigation and would not be entitled to do so were it not for an order under these provisions, then if the judge has reason to believe that (in those or any other proceedings

in which he has exercised a right of audience or a right to conduct litigation) that person has intentionally misled the court, or otherwise demonstrated that he is unsuitable to exercise that right, the judge may order that person's disqualification from exercising any right of audience or any right to conduct litigation in proceedings in any county court¹⁵. Where a judge makes such an order he must give his reasons for doing so¹⁶. Any person against whom such an order is made may appeal to the Court of Appeal¹⁷ and any such order may be revoked at any time by any judge of a county court¹⁸.

Any person may exercise rights of audience in proceedings dealt with as a small claim in accordance with rules of court¹⁹; but a lay representative may not exercise any right of audience where his client does not attend the hearing, at any stage after judgment or on any appeal brought against any decision made by the district judge in the proceedings²⁰.

Where a claim is brought in a county court by a local authority²¹ for either or both of the following:

- 273 (a) the recovery of possession of a house²² belonging to the authority;
- 274 (b) the recovery of any rent, mesne profits, damages or other sum claimed by the authority in respect of the occupation by any person of such a house,

then, in so far as the proceedings in the claim are heard by the district judge, any officer of the authority authorised by the authority in that behalf may address the district judge²³.

1 County Courts Act 1984 s 142. As to the enforcement of solicitors' undertakings see LEGAL PROFESSIONS vol 65 (2008) PARA 749 et seq.

2 'Legal representative' means an authorised advocate or authorised litigator as defined by the Courts and Legal Services Act 1990 s 119(1) (ie a person who has a right of audience or a right to conduct litigation granted by an authorised body in accordance with the provisions of the 1990 Act: see PARAS 331-332 ante; and LEGAL PROFESSIONS): County Courts Act 1984 s 147(1) (definition added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 49).

3 As to rights of audience and rights to conduct litigation see generally paras 331-332 ante; and LEGAL PROFESSIONS.

4 Ie by virtue of an order made under the Courts and Legal Services Act 1990 s 11 (as amended): see the text and notes 6-20 infra.

5 County Courts Act 1984 s 143(1) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 48).

6 As to the Senior Presiding Judge see PARA 504 ante.

7 Courts and Legal Services Act 1990 s 11(1), (10).

8 For these purposes, 'domestic premises' means any premises which are wholly or mainly used as a private dwelling: *ibid* s 11(11).

9 As to small claims see CIVIL PROCEDURE vol 11 (2009) PARAS 267, 274 et seq.

10 Courts and Legal Services Act 1990 s 11(2) (amended by the Civil Procedure (Modification of Enactments) Order 1999, SI 1999/1217, art 3). In the exercise of this power, the Lord Chancellor has made the Lay Representatives (Rights of Audience) Order 1999, SI 1999/1225, which came into force on 18 May 1999: art 1. As to the provision made by the 1999 Order see PARA 331 ante; and the text and notes 19-20 infra.

11 Ie the Solicitors Act 1974 s 20 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 589.

12 Courts and Legal Services Act 1990 s 11(3).

13 *Ibid* s 11(4).

14 *Ibid* s 11(5).

15 Ibid s 11(6).

16 Ibid s 11(7).

17 Ibid s 11(8).

18 Ibid s 11(9). As to judges of county courts see PARA 724 post.

19 Lay Representatives (Rights of Audience) Order 1999, SI 1999/1225, art 3(1).

20 Ibid art 3(2).

21 For these purposes, 'local authority' means a county council, a district council, the Broads Authority, any National Park authority, a London borough council, a police authority established under the Police Act 1996 s 3, the Metropolitan Police Authority, the Service Authority for the National Criminal Intelligence Service, the Service Authority for the National Crime Squad, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (as amended), the London Fire and Emergency Planning Authority or the Common Council of the City of London: County Courts Act 1984 s 60(3) (definition amended by the Local Government Act 1985 ss 84, 102, Sch 14, para 63, Sch 17; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 24; the Education Reform Act 1988 s 237, Sch 13 Pt I; the Environment Act 1995 s 78, Sch 10 para 23; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt II para 57; the Police Act 1996 s 103, Sch 7, para 1(2)(u); the Greater London Authority Act 1999 ss 325, 328, Sch 27 para 49, Sch 29 Pt I para 38; and by the Police Act 1997 s 134(1), Sch 9 para 45; the last amendment listed is prospectively repealed by the Criminal Justice and Police Act 2001 ss 128(1), 137, Sch 6 Pt 3 para 66, Sch 7 Pt 5(1) so as to remove the references to the Service Authorities for the National Crime Intelligence Service and the National Crime Squad).

22 For these purposes, 'house' includes a part of a house, a flat or any other dwelling and also includes any yard, garden, outhouse or appurtenance occupied with a house or part of a house or with a flat or other dwelling; and any reference to the occupation of a house by a person includes a reference to anything done by that person, or caused or permitted by him to be done, in relation to the house as occupier of the house, whether under a tenancy or licence or otherwise: County Courts Act 1984 s 60(3).

23 Ibid s 60(2) (amended by the Courts and Legal Services Act 1990 s 125(7), Sch 20).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

706 Legal representation in county courts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 7-18--Courts and Legal Services Act 1990 s 11 amended: Constitutional Reform Act 2005 Sch 4 para 214, Sch 18 Pt 2.

NOTE 21--Definition of 'local authority' in County Courts Act 1984 s 60(3) further amended: Local Government and Public Involvement in Health Act 2007 Sch 13 para

40; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 58.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(2) DISTRICTS AND SITTINGS/707. Delimitation of county court districts.

(2) DISTRICTS AND SITTINGS

707. Delimitation of county court districts.

The County Courts Act 1846¹ provided that the executive by Order in Council might determine what courts should be established, where they should be held and over what district the jurisdiction of each court should extend². The County Courts Act 1984, while similarly providing for the division of England and Wales (excluding the City of London) into districts and the holding of a court for each district at one or more places in it³, confirmed the holding of county courts for the districts and at the places already appointed under previous enactments⁴. The Lord Chancellor may by order made by statutory instrument⁵ specify places at which county courts are to be held and the name by which the court held at any place so specified is to be known⁶. The districts for which county courts are held are to be determined in accordance with directions given by or on behalf of the Lord Chancellor⁷. There are some 240 county courts in total.

Certain county courts are designated as divorce county courts⁸. County courts may be designated for race relations purposes or assigned for those purposes to race relations county courts⁹. Certain county courts are excluded from having jurisdiction under the Insolvency Act 1986 and attached for those purposes to other courts¹⁰ while other county courts are authorised to hear mercantile claims¹¹, Technology and Construction Court claims¹² and patents and other specialist proceedings¹³. The Northampton County Court houses the production centre for the issue of claim forms under the Civil Procedure Rules¹⁴ and is the only county court in which proceedings for the recovery of certain road traffic penalties may be taken¹⁵.

The former Admiralty jurisdiction of the county courts was abolished with effect from 26 April 1999¹⁶.

The former jurisdiction of the Court of the Vice-Warden of the Stannaries is now exercisable only by the county courts of Cornwall¹⁷.

1 See PARA 701 ante.

2 County Courts Act 1846 preamble, s 2 (repealed).

3 See the County Courts Act 1984 s 1(1), (3) (s 1(1) amended by the Civil Procedure Act 1997 s 10, Sch 2 para 2(1), (4)). As to the City of London see PARA 708 post.

4 See the County Courts Act 1984 s 2(4).

5 The order must be laid before Parliament after being made: *ibid* s 2(2). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 *Ibid* s 2(1), (2). By virtue of s 2(4) (see note 4 supra) and of the Interpretation Act 1978 s 17(2)(b), the Civil Courts Order 1983, SI 1983/713 (as amended) has effect as if so made. At the date at which this title states the law, there were county courts at Aberdare, Aberystwyth, Accrington, Aldershot, Alnwick, Altrincham, Ashford, Aylesbury, Banbury, Barnet, Barnsley, Barnstaple, Barrow-in-Furness, Basildon, Basingstoke, Bath, Bedford, Berwick upon Tweed, Birkenhead, Birmingham, Bishop Auckland, Blackburn, Blackpool, Blackwood, Blyth, Bodmin, Bolton, Boston, Bournemouth, Bow, Bradford, Brecon, Brentford, Bridgend, Bridlington, Brighton, Bristol, Bromley, Burnley, Burton-on-Trent, Bury, Bury St Edmunds, Buxton, Caernarfon, Caerphilly, Cambridge,

Canterbury, Cardiff, Carlisle, Carmarthen, Chatham, Chelmsford, Cheltenham, Chester, Chesterfield, Chichester, Chorley, City of London, Clerkenwell, Colchester, Colwyn Bay, Consett, Conwy, Coventry, Crewe, Croydon, Darlington, Dartford, Derby, Dewsbury, Doncaster, Dudley, Durham, Eastbourne, Edmonton, Epsom, Evesham, Exeter, Gateshead, Gloucester, Goole, Grantham, Gravesend, Grimsby, Guildford, Halifax, Harlow, Harrogate, Hartlepool, Hastings, Haverfordwest, Haywards Heath, Hereford, Hertford, High Wycombe, Hitchin, Horsham, Huddersfield, Huntingdon, Ilford, Ipswich, Keighley, Kendal, Kettering, Kidderminster, Kings Lynn, Kingston-upon-Hull, Kingston-upon-Thames, Lambeth, Lancaster, Leeds, Leicester, Leigh, Lewes, Lincoln, Liverpool, Llanelli, Llangefri, Lowestoft, Ludlow, Luton, Macclesfield, Maidstone, Manchester, Mansfield, Margate, Marylebone, Melton Mowbray, Merthyr Tydfil, Middlesbrough, Milton Keynes, Mold, Morpeth, Neath, Nelson, Newark, Newbury, Newcastle upon Tyne, Newport (Gwent), Newport (Isle of Wight), Northampton, North Shields, Northwich, Norwich, Nottingham, Nuneaton, Oldham, Oswestry, Oxford, Penrith, Penzance, Peterborough, Plymouth, Pontefract, Pontypool, Pontypridd, Poole, Portsmouth, Preston, Rawenstall, Reading, Redditch, Redhill, Rhyl, Romford, Rotherham, Rugby, Runcorn, St Albans, St Helens, Salford, Salisbury, Scarborough, Scunthorpe, Sheffield, Shoreditch, Shrewsbury, Skegness, Skipton, Slough, Southampton, Southend-on-Sea, Southport, South Shields, Stafford, Staines, Stockport, Stoke-on-Trent, Stourbridge, Stratford-upon-Avon, Sunderland, Swansea, Swindon, Tameside, Tamworth, Taunton, Telford, Torquay, Trowbridge, Truro, Tunbridge Wells, Uxbridge, Wakefield, Walsall, Wandsworth, Warrington, Warwick, Watford, Wellingborough, Welshpool, West Kensington, Weston super Mare, Weymouth, Whitehaven, Wigan, Willesden, Winchester, Wolverhampton, Woolwich, Worcester, Worksop, Worthing, Wrexham, Yeovil and York: art 6(1), Sch 3 col 1 (Sch 3 amended by SI 1984/297; SI 1984/1075; SI 1985/511; SI 1986/754; SI 1986/1361; SI 1986/1363; SI 1986/2207; SI 1988/2165; SI 1989/106; SI 1989/107; SI 1989/914; SI 1991/1809; SI 1991/2211; SI 1992/593; SI 1992/1345; SI 1992/1810; SI 1992/3071; SI 1993/1809; SI 1993/3120; SI 1994/706; SI 1994/1536; SI 1994/2626; SI 1994/2893; SI 1995/1897; SI 1995/3173; SI 1996/68; SI 1996/588; SI 1996/2579; SI 1997/361; SI 1997/1085; SI 1997/2310; SI 1998/1880; SI 1998/2910; SI 1999/216; SI 1999/1011; SI 1999/3187; SI 2000/1482; SI 2000/2738; and SI 2001/4025).

7 County Courts Act 1984 s 2(3).

8 Civil Courts Order 1983, SI 1983/713, art 7. At the date at which this volume states the law, the following county courts had divorce jurisdiction: Aberystwyth, Accrington, Aldershot, Altrincham, Barnet, Barnsley, Barnstaple, Barrow-in-Furness, Basingstoke, Bath, Bedford, Birkenhead, Birmingham, Bishop Auckland, Blackburn, Blackpool, Blackwood, Bodmin, Bolton, Boston, Bournemouth, Bow, Bradford, Brecon, Brentford, Bridgend, Brighton, Bristol, Bromley, Burnley, Burton-on-Trent, Bury, Bury St Edmunds, Caernarfon, Cambridge, Canterbury, Cardiff, Carlisle, Carmarthen, Chatham, Chelmsford, Chester, Chesterfield, Chichester, Chorley, Colchester, Colwyn Bay, Consett, Coventry, Crewe, Croydon, Darlington, Derby, Dewsbury, Doncaster, Dudley, Durham, Eastbourne, Edmonton, Epsom, Exeter, Gateshead, Gloucester, Grimsby, Guildford, Halifax, Harlow, Harrogate, Hartlepool, Hastings, Haverfordwest, Hereford, Hertford, Hitchin, Horsham, Huddersfield, Ilford, Ipswich, Keighley, Kendal, Kings Lynn, Kingston-upon-Hull, Kingston-upon-Thames, Lancaster, Leeds, Leicester, Leigh, Lincoln, Liverpool, Llanelli, Llangefri, Lowestoft, Luton, Macclesfield, Maidstone, Manchester, Mansfield, Margate, Merthyr Tydfil, Middlesbrough, Milton Keynes, Morpeth, Neath, Nelson, Newcastle upon Tyne, Newport (Gwent), Newport (Isle of Wight), Northampton, North Shields, Norwich, Nottingham, Oldham, Oxford, Penrith, Penzance, Peterborough, Plymouth, Pontefract, Pontypridd, Portsmouth, Preston, Rawenstall, Reading, Redhill, Rhyl, Romford, Rotherham, Runcorn, St Helens, Salford, Salisbury, Scarborough, Scunthorpe, Sheffield, Shrewsbury, Skipton, Slough, Southampton, Southend-on-Sea, Southport, South Shields, Stafford, Staines, Stockport, Stoke-on-Trent, Stourbridge, Sunderland, Swansea, Swindon, Taunton, Telford, Torquay, Trowbridge, Truro, Tunbridge Wells, Uxbridge, Wakefield, Walsall, Wandsworth, Warrington, Watford, Welshpool, Weston super Mare, Weymouth, Whitehaven, Wigan, Willesden, Winchester, Wolverhampton, Worcester, Worthing, Wrexham, Yeovil and York: art 7, Sch 3 col 2 (Sch 3 as amended: see note 6 supra).

9 See *ibid* art 10. At the date at which this volume states the law, the following county courts had race relations jurisdiction: Birmingham, Bristol, Cambridge, Canterbury, Cardiff, Carlisle, Exeter, Leeds, Manchester, Marylebone, Newcastle upon Tyne, Nottingham, Oxford, Plymouth, Southampton and Wrexham: art 10, Sch 3 cols 2, 5 (Sch 3 as amended: see note 6 supra).

10 See *ibid* art 9 (amended by SI 1986/2001, art 2, Schedule). At the date at which this volume states the law, only the following county courts had bankruptcy and winding-up jurisdiction under the Insolvency Act 1986: Aberdare, Aberystwyth, Aylesbury, Banbury, Barnsley, Barnstaple, Barrow-in-Furness, Bath, Bedford, Birkenhead, Birmingham, Blackburn, Blackpool, Blackwood, Bolton, Boston, Bournemouth, Bradford, Bridgend, Brighton, Bristol, Burnley, Burton-on-Trent, Bury St Edmunds, Caernarfon, Cambridge, Canterbury, Cardiff, Carlisle, Carmarthen, Chatham, Chelmsford, Cheltenham, Chester, Chesterfield, Colchester, Coventry, Crewe, Croydon, Darlington, Derby, Dewsbury, Doncaster, Dudley, Durham, Eastbourne, Exeter, Gloucester, Grimsby, Guildford, Halifax, Harrogate, Hartlepool, Hastings, Haverfordwest, Hereford, Hertford, Huddersfield, Ipswich, Kendal, Kidderminster, Kings Lynn, Kingston-upon-Hull, Kingston-upon-Thames, Lancaster, Leeds, Leicester, Lincoln, Liverpool, Llangefri, Luton, Macclesfield, Maidstone, Manchester, Merthyr Tydfil, Middlesbrough, Neath, Newbury, Newcastle upon Tyne, Newport (Gwent), Newport (Isle of Wight), Northampton, Norwich, Nottingham, Oldham, Oxford, Peterborough, Plymouth, Pontypridd, Portsmouth, Preston, Reading, Rhyl, Romford, St Albans, Salford, Salisbury, Scarborough, Scunthorpe, Sheffield, Shrewsbury, Slough, Southampton, Southend-on-Sea, Stafford, Stockport, Stoke-on-Trent, Stourbridge, Sunderland, Swansea, Swindon, Tameside, Taunton, Torquay,

Truro, Tunbridge Wells, Wakefield, Walsall, Warrington, Warwick, Welshpool, Weymouth, Whitehaven, Wigan, Winchester, Wolverhampton, Worcester, Wrexham, Yeovil and York: Civil Courts Order 1983, SI 1983/713, art 9 (as so amended), Sch 3 cols 2, 4 (Sch 3 as amended: see note 6 supra).

11 Mercantile courts have been established at Manchester, Liverpool, Birmingham, Bristol, Leeds, Newcastle upon Tyne, Cardiff and Chester: see CIVIL PROCEDURE vol 12 (2009) PARA 1545.

12 A claim form for the Technology and Construction Court may not be issued in a county court office other than a county court office where there is also a High Court district registry or the office of the Central London County Court: see CIVIL PROCEDURE vol 12 (2009) PARA 1546. As to district registries see PARA 646 ante.

13 See CIVIL PROCEDURE vol 12 (2009) PARA 1547. As to the Lord Chancellor's power to designate individual county courts as 'patent county courts' with special jurisdiction to hear and determine proceedings relating to patents and designs or proceedings ancillary to, or arising out of the same subject matter as, proceedings relating to patents or designs see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 644 et seq.

14 See *Practice Direction--Production Centre* PD 7C; and CIVIL PROCEDURE vol 11 (2009) PARA 126.

15 See the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 8A (as added and amended); para 713 post; and ROAD TRAFFIC.

16 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 209.

17 The Stannaries Court (Abolition) Act 1896 s 1(1) abolished the Court of the Vice-Warden of the Stannaries and transferred its jurisdiction to such county courts as the Lord Chancellor might direct by order. By an Order dated 16 December 1896, SR & O 1896/1106, the county courts of Cornwall were designated as the courts to which the jurisdiction of the Stannaries Court was to be transferred (art 1), but it was directed that the jurisdiction in companies winding-up matters, and in cases where the subject matter was not within the limits of the county court jurisdiction, should be exercised exclusively by the court having bankruptcy jurisdiction in Cornwall (ie Truro) (art 5).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

707 Delimitation of county court districts

TEXT AND NOTES 4-7--County Courts Act 1984 s 2 amended: Constitutional Reform Act 2005 Sch 4 para 161.

NOTE 6--County courts at Clerkenwell and Shoreditch replaced by Clerkenwell & Shoreditch County Court: SI 1983/713 Sch 3 (amended by SI 2005/2923, SI 2006/1542, SI 2007/786, SI 2009/2455, SI 2009/3320).

NOTES 10, 11--As to the exclusion of certain county courts from having jurisdiction under the Companies Act 2006 and the assignment of the district of each excluded court to another county court, see SI 1983/713 art 10A (added by SI 2009/2455).

NOTE 17--Stannaries Court (Abolition) Act 1896 s 1 amended: 2005 Act Sch 4 para 17.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(2)
DISTRICTS AND SITTINGS/708. City of London.

708. City of London.

Jurisdiction within the City of London was formerly exercised by the Mayor's and City of London Court, which for the purposes of all proceedings within the jurisdiction of a county court was deemed to be a county court and was governed by the statutes and rules for the time being applicable to county courts¹.

The Mayor's and City of London Court was abolished by the Courts Act 1971² and the City of London became a county court district³, with the court retaining the name Mayor's and City of London Court⁴. Notwithstanding anything in the Courts Act 1971, the provisions of any enactment or rule of law applicable immediately before 1 January 1972 to any act, judgment or order of the former Mayor's and City of London Court continue to apply to it on and after that date, but anything required on or after that date to be done by or to the former Mayor's and City of London Court or any officers of it, under or by virtue of that enactment or rule of law, is to be treated as validly done by or to the county court⁵. All outstanding fees and similar payments which had not been paid by 1 January 1972 became due to the Common Council of the City of London and were recoverable as if they were due under an order of the High Court⁶. Investments and money which constituted the funds in court in the former Mayor's and City of London Court were vested in the then registrar of the county court as funds in that court on 8 January 1972⁷, save that so much of the investments and money as was held in the joint names of the Chamberlain of the City of London and the district judge of the former court became vested without any transfer or assignment jointly in the then registrar of the county court and the Accountant General of the Supreme Court⁸.

The Common Council of the City of London is under a duty to continue to make the courthouse and accommodation of the former Mayor's and City of London Court available for the use of the county court⁹, and the Common Council may not undertake any alteration or extension of those buildings or accommodation or provide further accommodation for that purpose without the Lord Chancellor's consent¹⁰.

1 County Courts Act 1959 s 197(1) (repealed).

2 Courts Act 1971 s 42(1).

3 Ibid s 42(2), (4), Sch 5 Pt II. By Sch 2 para 7, special provision was made for payment of remuneration, pension and other benefits to the former assistant judge of the court.

4 Ibid s 42(3).

5 Ibid s 42(4), Sch 5 paras 6, 7(3).

6 Ibid Sch 5 para 8.

7 Ibid Sch 5 para 9(1).

8 Ibid Sch 5 para 9(2).

9 Ibid s 29(1).

10 Ibid s 29(2). These duties may be varied, restricted or terminated at any time by agreement between the Lord Chancellor and the Common Council: s 29(3). As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

708 City of London

TEXT AND NOTES 2-8--1971 Act s 42(1), (4), Sch 5 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 9, 10--For 'Lord Chancellor' read 'Secretary of State': 1971 Act s 29(1)-(3) (amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887). The relevant Secretary of State is the Secretary of State for Constitutional Affairs: SI 2003/1887 art 4, Sch 1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(2) DISTRICTS AND SITTINGS/709. Sittings.

709. Sittings.

County courts are held for one or more places in each county court district¹. In any such district the places at which the court sits are to be determined in accordance with directions given by or on behalf of the Lord Chancellor². The provision of accommodation for county courts has already been discussed³.

¹ See the County Courts Act 1984 s 1(1), (3) (as amended); and PARA 707 ante. As to the City of London see PARA 708 ante.

² See *ibid* s 3(1); and PARAS 509, 512 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

³ See PARA 512 ante.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/710. Original jurisdiction; in general.

(3) JURISDICTION

(i) General and Special Jurisdiction

710. Original jurisdiction; in general.

Under the County Courts Act 1984, and subject to the monetary limits set out in the High Court and County Courts Jurisdiction Order 1991¹ and the practice direction supplementing the Civil Procedure Rules which regulates the commencement of proceedings², a county court has jurisdiction to entertain nearly all types of claims which may be the subject of civil proceedings in the High Court. Thus, within those limits and subject to that practice direction and to the exceptions stated subsequently, it may hear and determine any claim founded on contract or tort³, any claim for the payment of money recoverable by statute⁴, any claim for the recovery of land⁵, and any of the classes of equity⁶ and probate⁷ proceedings mentioned in the 1984 Act.

If the parties to any claim, other than a claim which, if commenced in the High Court, would have been assigned to the Chancery Division⁸ or to the Family Division⁹ or have involved the exercise of the High Court's Admiralty jurisdiction¹⁰, agree, by a memorandum signed by them or by their respective legal representatives¹¹, that a county court specified in the memorandum is to have jurisdiction in the claim, that court has jurisdiction to hear and determine the claim accordingly¹².

It is not lawful for any claimant to divide any cause of action for the purpose of bringing two or more claims in one or more of the county courts¹³.

Where a claimant has a cause of action for more than the county court limit¹⁴ in which, if it were not for more than the county court limit, a county court would have jurisdiction, the claimant may abandon the excess, and thereupon a county court has jurisdiction to hear and determine the claim, but the claimant is not to recover in the proceedings an amount exceeding the county court limit¹⁵. Where the court has jurisdiction to hear and determine a claim by virtue of this provision, the judgment of the court in the claim is in full discharge of all demands in respect of the cause of action, and entry of the judgment must be made accordingly¹⁶.

Where a county court is satisfied that any proceedings before it are required¹⁷ to be in the High Court, it must order the transfer of the proceedings to the High Court or, if the court is satisfied that the person bringing the proceedings knew, or ought to have known, of that requirement, must order that they be struck out¹⁸. It also has power to order the transfer of any proceedings before it to the High Court, subject to any statutory provision to the contrary¹⁹. Similarly, the High Court has power to order that proceedings before it are to be transferred to a county court, and must either do so, or order the proceedings to be struck out, in similar circumstances to those described above²⁰. The High Court also has power to order that any proceedings, or part of proceedings, in a county court are to be transferred to the High Court at any stage in them²¹.

Every matrimonial cause must be commenced in a divorce county court²² and must be heard and determined in that or another such court unless or except to the extent that it is transferred to the High Court²³.

1 le the High Court and County Courts Jurisdiction Order 1991, SI 1991/724 (as amended): see PARA 579 ante, para 721 post; and CIVIL PROCEDURE vol 11 (2009) PARAS 58, 116.

2 See CPR 7.1; *Practice Direction--How to Start Proceedings--the Claim Form* PD 7A; and CIVIL PROCEDURE vol 11 (2009) PARA 116.

3 See the County Courts Act 1984 s 15 (as amended); and PARA 712 post.

4 See *ibid* s 16 (as amended); and PARA 713 post.

5 See *ibid* s 21 (as amended); and PARA 715 post.

6 See *ibid* ss 23, 24 (as amended); and PARA 719 post.

7 See *ibid* s 32 (as substituted), s 33 (as amended); and PARA 718 post.

8 As to the assignment of business to the Chancery Division see PARA 611 ante.

9 As to the assignment of business to the Family Division see PARA 617 ante.

10 County courts no longer have Admiralty jurisdiction (see PARA 707 the text and note 16 ante) although at the date at which this title states the law the provisions of the County Courts Act 1984 relating to Admiralty jurisdiction (ie ss 26-31 (as amended)) had not been repealed. As to the Admiralty jurisdiction of the High Court see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 79 et seq.

11 'Legal representative' means an authorised advocate or authorised litigator as defined by the Courts and Legal Services Act 1990 s 119(1) (ie a person who has a right of audience or a right to conduct litigation granted by an authorised body in accordance with the provisions of the 1990 Act: see PARAS 331-332 ante; and LEGAL PROFESSIONS): County Courts Act 1984 s 147(1) (definition added, and the County Courts Act 1984 s 18 amended, by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 49).

12 County Courts Act 1984 s 18 (as amended: see note 11 supra). The agreement may be made at any time before judgment: *R v Judge Willes, ex p Abbey National Building Society* [1954] 1 WLR 136, DC (decided under earlier legislation). The memorandum need not be contained in a single document, and the consent is validly given if in existence at the hearing: *Williams v Settle* [1960] 2 All ER 806, [1960] 1 WLR 1072, CA (decided under earlier legislation). Where the parties have given consent to the case being heard in the county court no question as to jurisdiction arises: *R v Judge Willes, ex p Abbey National Building Society* supra.

13 County Courts Act 1984 s 35. What is a single cause of action for this purpose is a question of fact. Where one item in a tradesman's bill is connected with another, in the sense that the dealing is not intended to terminate with one contract but to be continuous, so that one item, if not paid, is united with another, the whole bill forms one entire demand and consequently one cause of action: *Re Aykroyd, Grimby v Aykroyd* (1848) 1 Exch 479; *Wood v Perry* (1849) 3 Exch 442; *Bonsey v Wordsworth* (1856) 18 CB 325; *Kimpton v Willey* (1850) 9 CB 719. On the other hand a plaintiff who had supplied liquor and lent money to a defendant at different times, and who had marked down separate items but subsequently entered them in a book as one account and sent an account for the whole to the defendant, was allowed to sue in respect of separate causes of action: *Brunskill v Powell* (1850) 19 LJ Ex 362. Where, however, a contract for the hire of goods provides for the payment of periodic sums by way of rent, each sum constitutes a separate cause of action: *Rentit Ltd v Oaten* [1938] LJNCCR 137. On the breach of a hire purchase agreement where the goods had been seized, an action for arrears of hire before the termination of the agreement was held to be an action for debt, and a later action for damages for breach of contract was held not brought on the same cause of action, and not barred: *Overstone Ltd v Shipway* [1962] 1 All ER 52, [1962] 1 WLR 117, CA. A claim for rent in arrear and a claim under the Landlord and Tenant Act 1730 for holding over after notice to quit constitute distinct causes of action, as they assume the existence of different relations, and may be sued for separately: *Wickham v Lee* (1848) 12 QB 521. Similarly, damage to goods and injury to the person, although occasioned by one and the same wrongful act, are infringements of separate rights and therefore give rise to distinct causes of action: *Brunsdon v Humphrey* (1884) 14 QBD 141, CA. If the claimant divides his cause of action contrary to these provisions the defendant should object at the trial: see *Vines v Arnold* (1849) 8 CB 632; *Adkin v Friend* (1878) 38 LT 393; *Sanders v Hamilton* (1907) 96 LT 679. All the cases cited in this note were decided under earlier legislation.

14 'The county court limit' means: (1) in relation to any enactment contained in the County Courts Act 1984 for which a limit is for the time being specified by an Order under s 145, that limit; and (2) in relation to any enactment contained in the 1984 Act and not within head (1) supra, the county court limit for the time being specified by any other Order in Council or order defining the limit of county court jurisdiction for the purposes of that enactment: s 147(1) (definition amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule). If it appears to Her Majesty in Council that the county court limit for the purposes of any enactment referring to that limit should be increased, Her Majesty may by Order in Council direct that the limit in question shall be such amount as may be specified in the Order: County Courts Act 1984 s 145(1). Such an Order may contain such incidental or transitional provisions as Her Majesty considers appropriate: s 145(2). No recommendation must be made to Her Majesty in Council to make such an Order unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament: s 145(3). At the date at which this title states the law, no such Order had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the County Courts Jurisdiction Order 1981, SI 1981/1123, has effect for certain purposes of the County Courts Act 1984, and sets a limit of £30,000 in respect of a county court's equity jurisdiction (see PARA 719 post) and probate jurisdiction (see PARA 718 post). The High Court and County Courts Jurisdiction Order 1991, SI 1991/724, provides that certain county court jurisdiction is unlimited (see art 2(1) (as amended)); and

sets limits in other cases (see art 2(2)-(7)). The Order does not apply to family proceedings: see art 12. See further PARA 579 ante, para 721 notes 11-12 post; and CIVIL PROCEDURE vol 11 (2009) PARA 58.

15 County Courts Act 1984 s 17(1).

16 Ibid s 17(2).

17 Ie by any provision made under the Courts and Legal Services Act 1990 s 1 (see PARA 579 ante) or by or under any other enactment: County Courts Act 1984 s 42(7) (s 42 substituted by the Courts and Legal Services Act 1990 s 2(3)).

18 See the County Courts Act 1984 s 42(1) (as substituted: see note 17 supra); and CIVIL PROCEDURE vol 11 (2009) PARA 69. Section 42 (as so substituted) does not apply to family proceedings: see s 42(8) (as so substituted).

19 See ibid s 42(2) (as substituted: see note 17 supra); and CIVIL PROCEDURE vol 11 (2009) PARA 69. This does not apply to family proceedings: see note 18 supra. As to the transfer of family proceedings from a county court to the High Court see the Matrimonial and Family Proceedings Act 1984 s 39; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 746.

20 See the County Courts Act 1984 s 40 (substituted by the Courts and Legal Services Act 1990 s 2(1)); and CIVIL PROCEDURE vol 11 (2009) PARA 69. This does not apply to family proceedings: see the County Courts Act 1984 s 40(9) (as so substituted). As to the transfer of family proceedings from the High Court to a county court see the Matrimonial and Family Proceedings Act 1984 s 38 (as amended); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 745.

21 See the County Courts Act 1984 s 41 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 69.

22 As to divorce county courts see PARA 707 note 8 ante.

23 See the Matrimonial and Family Proceedings Act 1984 s 33; para 720 post; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 732.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

710 Original jurisdiction; in general

NOTE 14--It is for the Lord Chancellor to recommend to Her Majesty the making of an order under the 1984 Act s 145(1): s 145(2A) (added by Constitutional Reform Act 2005 Sch 4 para 170).

NOTE 18--As to the power to transfer proceedings see further *Schmidt v Wong* [2005] EWCA Civ 1506, [2006] 1 WLR 561; and CIVIL PROCEDURE vol 11 (2009) PARA 69 NOTE 7.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/711. Remedies available in county courts; in general.

711. Remedies available in county courts; in general.

Subject to what follows, in any proceedings in a county court the court may make any order which could be made by the High Court if the proceedings were in the High Court¹. Any order made by a county court may be absolute or conditional, final or interim².

A county court does not have power to make mandatory, quashing or prohibiting orders³ or to make any order of a prescribed⁴ kind⁵. The County Court Remedies Regulations 1991⁶, which prescribe such orders (described as 'prescribed relief'), provide that a county court may not generally grant (1) an order requiring a party to admit any other party to premises for the purpose of inspecting or removing documents or articles which may provide evidence in any proceedings, whether or not the proceedings have been commenced; or (2) an interim injunction restraining a party from removing from the jurisdiction of the High Court assets located within that jurisdiction or restraining a party from dealing with assets whether located within the jurisdiction of the High Court or not⁷. Nor may a county court vary or revoke an order made by the High Court granting such relief⁸. However, these restrictions do not apply to any county court held by a judge of the Court of Appeal⁹ or judge of the High Court¹⁰ sitting as a judge for any county court district¹¹. Nor do they apply to a patents county court held by a person nominated¹² to sit as a judge of that court¹³; and a county court may grant relief of a kind referred to in head (2) above:

- 275 (a) when exercising jurisdiction in family proceedings¹⁴;
- 276 (b) for the purpose of making an order for the preservation, custody or detention of property which forms or may form the subject matter of proceedings¹⁵;
- 277 (c) in aid of execution of a judgment or order made in proceedings in a county court to preserve assets until execution can be levied upon them¹⁶; or
- 278 (d) where the proceedings are to be or are included in the business list of the Central London Civil Trial Centre and the application is made to a circuit judge¹⁷ nominated by the Senior Presiding Judge¹⁸.

Furthermore, the restrictions set out in the 1991 Regulations do not affect or modify powers expressly conferred on a county court by or under any enactment other than the provision of the County Courts Act 1984 set out above or prevent a county court from varying an order granting prescribed relief where all the parties are agreed on the terms of the variation¹⁹.

A county court's power to grant interim remedies is discussed in detail elsewhere in this work²⁰, as is the trial of counterclaims²¹ and county court interpleader²².

1 County Courts Act 1984 s 38(1) (s 38 substituted by the Courts and Legal Services Act 1990 s 3). Even when it is just and convenient to grant an injunction under this power, it must be shown that the party in question has a substantive legal or equitable right upon which a claim may be brought: *Ali v Westminster City Council, Nairne v Camden London Borough Council* [1999] 1 All ER 450, CA. See also *R v Central London County Court and anor, ex p London* [1999] QB 1260, [1999] 3 All ER 991, CA (general power in the County Courts Act 1984 s 38 (as substituted) not excluded by the Mental Health Act 1983).

2 See the County Courts Act 1984 s 38(2) (as substituted: see note 1 supra). The statute refers to 'interlocutory' rather than 'interim' orders; 'interim' is the term used, however, in the Civil Procedure Rules ('CPR'). As to the CPR see PARA 575 ante.

3 County Courts Act 1984 s 38(3)(a) (as substituted: see note 1 supra). The statute refers to 'orders of mandamus, certiorari or prohibition' but these are now known as mandatory orders, quashing orders and prohibiting orders: see CPR 51.1(2); and JUDICIAL REVIEW vol 61 (2010) PARA 687 et seq. No order may be made under the Courts and Legal Services Act 1990 s 1 (allocation of business between High Court and county courts: see PARA 579 ante) so as to confer jurisdiction on any county court to hear any application for judicial review (the procedure by which applications for mandatory, quashing or prohibiting orders must be made): s 1(10).

4 For these purposes, 'prescribed' means prescribed by regulations made by the Lord Chancellor under the County Courts Act 1984 s 38 (as substituted: see note 1 supra): s 38(5) (as so substituted). The power to make such regulations is exercisable by statutory instrument, a draft of which must be approved by both Houses of

Parliament: s 38(6), (7) (as so substituted). Such regulations (1) may provide for any of their provisions not to apply in such circumstances or descriptions of case as may be specified in the regulations; (2) may provide for the transfer of the proceedings to the High Court for the purpose of enabling an order of a prescribed kind to be made; (3) may make such provision with respect to matters of procedure as the Lord Chancellor considers expedient; and (4) may make provision amending or repealing any provision made by or under any enactment, so far as may be necessary or expedient in consequence of the regulations: s 38(4) (as so substituted). In the exercise of the power so conferred, the Lord Chancellor has made the County Court Remedies Regulations 1991, SI 1991/1222 (as amended) which came into force on 1 July 1991: reg 1. See the text and notes 6-19 *infra*. As to the Lord Chancellor see PARA 501 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*.

5 County Courts Act 1984 s 38(3)(b) (as substituted: see note 1 *supra*).

6 *Ie* the County Court Remedies Regulations 1991, SI 1991/1222 (amended by SI 1995/206): see the text and notes 7-19 *infra*.

7 County Court Remedies Regulations 1991, SI 1991/1222, regs 2, 3(1). An application to the High Court for relief of a kind referred to in head (1) in the text in county court proceedings is deemed by the 1991 Regulations to include an application for transfer of the proceedings to the High Court: reg 4. After an application for prescribed relief has been disposed of by the High Court, the proceedings must, unless the High Court orders otherwise, be transferred to a county court if they were transferred to the High Court or they should, apart from the 1991 Regulations, have been commenced in a county court; and where an order is made on an application without notice, the application is not treated as disposed of for these purposes until any application to set aside or vary the order has been heard, or until the expiry of 28 days (or such other period as the Court may specify) during which no such application has been made: reg 5.

8 *Ibid* reg 3(1).

9 As to Court of Appeal judges see PARAS 515, 637 *ante*.

10 As to High Court judges see PARAS 515, 602, 619 *ante*.

11 County Court Remedies Regulations 1991, SI 1991/1222, reg 3(2)(a).

12 *Ie* under the Copyright, Designs and Patents Act 1988 s 291: see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 648.

13 County Court Remedies Regulations 1991, SI 1991/1222, reg 3(2)(b).

14 *Ibid* reg 3(3)(a).

15 *Ibid* reg 3(3)(b) (as amended: see note 6 *supra*). As to such orders see CIVIL PROCEDURE vol 11 (2009) PARAS 114, 315.

16 *Ibid* reg 3(3)(c) (as amended: see note 6 *supra*). See further CIVIL PROCEDURE.

17 As to circuit judges see PARAS 522-525 *et seq ante*.

18 County Court Remedies Regulations 1991, SI 1991/1222, reg 3(3)(d), (3A) (added by SI 1995/206). As to the Senior Presiding Judge see PARA 504 *ante*.

19 County Court Remedies Regulations 1991, SI 1991/1222, reg 4.

20 See CIVIL PROCEDURE vol 11 (2009) PARA 315 *et seq*.

21 See CIVIL PROCEDURE vol 11 (2009) PARA 618 *et seq*.

22 See CIVIL PROCEDURE vol 12 (2009) PARA 1628 *et seq*.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601*l*. Accordingly the Supreme Court Act 1981 is to be cited as the

Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

711 Remedies available in county courts; in general

NOTE 4--County Courts Act 1984 s 38(4), (5) amended, s 38(4A) added: Constitutional Reform Act 2005 Sch 1 para 17, Sch 4 para 167, Sch 18 Pt 1.

NOTE 6--SI 1991/1222 further amended: SI 2002/439.

TEXT AND NOTES 17, 18--For 'business list' read 'mercantile list': SI 1991/1222 reg 3(3)(d), (3A) (amended by SI 2002/439).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/712. General jurisdiction in contract and tort.

712. General jurisdiction in contract and tort.

With certain exceptions¹ a county court has jurisdiction to hear and determine any claim founded on contract or tort², whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings³.

1 See the County Courts Act 1984 s 15(2) (as amended); and PARA 722 post.

2 Ibid s 15(1) (amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule). As to the distinction between claims founded on contract and claims founded on tort see CIVIL PROCEDURE VOL 11 (2009) PARA 20. In earlier Acts the expression used was 'personal actions', which was held to include an action against an executor involving a charge of devastavit: *Winch v Winch* (1853) 13 CB 128. See also *Hutchings v Islington London Borough Council* [1998] 3 All ER 445, [1998] 1 WLR 1629, CA (where a statutory superannuation scheme has been incorporated into a claimant's contract of employment so as to entitle him to pension benefits, the county court has jurisdiction by virtue of the County Courts Act 1984 s 15(1) (as so amended) to consider any claim relating to the pension, as the pension rights arise by virtue of the contract of employment and the claim is therefore founded on contract); *Agodzo v Bristol County Council* [1999] All ER (D) 556, [1999] 1 WLR 1971, CA (a county court has jurisdiction to hear a claim for a declaration that a local authority has overcharged for sewer maintenance).

3 High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(l).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/713. Jurisdiction where money recoverable by statute.

713. Jurisdiction where money recoverable by statute.

A county court has jurisdiction to hear and determine a claim for the recovery of a sum recoverable by virtue of any enactment for the time being in force, if it is not provided by that or any other enactment that such sums are only to be recoverable in the High Court¹ or are only to be recoverable summarily².

Proceedings for the recovery of: (1) increased penalty charges provided for in charge certificates issued under specified provisions of the Road Traffic Act 1991³ and the London Local Authorities Act 1996⁴; (2) amounts payable by a person other than a local authority under an adjudication of a parking adjudicator⁵; and (3) fixed penalties payable under fixed penalty notices issued under the Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997⁶, must be taken in the Northampton county court⁷.

1 As to the High Court see PARA 602 et seq ante. For an example of a sum recoverable in the High Court see the Compulsory Purchase Act 1965 s 12(5); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 644.

2 County Courts Act 1984 s 16 (amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule). For an example of a sum recoverable summarily see the Compulsory Purchase Act 1965 s 12(2); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 644.

The county court has always had jurisdiction in proceedings for the recovery of penalties: *Re Apothecaries' Co v Burt* (1850) 5 Exch 363. By the Common Informers Act 1951, the right of a common informer to sue for a penalty was abolished and criminal proceedings were substituted as a method of enforcing the statutes to which the Act applies. See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 2.

3 Ie under the Road Traffic Act 1991 s 66(7), Sch 6 para 6 (parking fines): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 891.

4 Ie under the London Local Authorities Act 1996 s 4, Sch 1 para 8 (as amended) (bus lanes): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 897.

5 Ie pursuant to the Road Traffic Act 1991 s 73 (as amended): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 895.

6 Ie under the Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997, SI 1997/3058, reg 5.

7 High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 8A (added by SI 1993/1407; amended by SI 1996/3141; SI 2001/1387).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

713 Jurisdiction where money recoverable by statute

TEXT AND NOTES 3-7--Head (1), add increased penalty charges provided for in charge certificates issued under the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, SI 2001/2313, reg 17 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 346), the Civil Enforcement of Parking Contraventions (England) General Regulations 2007, SI 2007/3483, reg 21 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 888), and the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008, SI 2008/609, reg 13 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 888); head (3), substitute amounts payable by a person other than a local authority under an adjudication pursuant to SI 2001/2313, the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, SI 2007/3482 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 873), and the Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008, SI 2008/608 (see ROAD TRAFFIC vol 38 (2006 Reissue) PARA 888); add head (4) increased fixed penalties referred to in the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, SI 2002/1808, reg 17(6) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 206), and the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003, SI 2003/300, reg 17(6) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 206); SI 1991/724 art 8A (further amended by SI 2009/577).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/714. Replevin.

714. Replevin.

Subject to the provisions of the County Courts Act 1984, the district judge¹ of the district in which any goods subject to replevin are taken has jurisdiction to approve of replevin bonds and grant replevins and to issue all necessary process in relation to them². At the instance of the party whose goods have been seized, he must cause the goods to be replevied to that party on his giving security as required by the Act³.

¹ As to the district judge see PARA 728 post.

² See the County Courts Act 1984 s 144, Sch 1 para 1(1), (2) (amended by virtue of the Courts and Legal Services Act 1990 s 74); and DISTRESS vol 13 (2007 Reissue) PARA 1084.

³ County Courts Act 1984 Sch 1 para 1(3) (as amended: see note 2 supra).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/715. Claims for recovery of land and claims where title is in question.

715. Claims for recovery of land and claims where title is in question.

A county court has jurisdiction to hear and determine any claim for the recovery of land¹ and any claim in which the title to any hereditament comes in question², whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings³.

Where a mortgage⁴ of land consists of or includes a dwelling-house⁵ and no part of the land is situated in Greater London then, if a county court has jurisdiction by virtue of these provisions to hear and determine a claim in which the mortgagee under that mortgage claims possession of the mortgaged property, no court other than a county court has jurisdiction to hear and determine that claim⁶; but this does not apply to a claim for foreclosure or sale in which a claim for possession of the mortgaged property is also made⁷.

These provisions do not apply to a mortgage securing an agreement which is a regulated agreement within the meaning of the Consumer Credit Act 1974⁸. However, a county court has jurisdiction under that Act⁹; and a judgment or order of a county court for the payment of a sum of money in proceedings arising out of such a regulated agreement may be enforced only in a county court¹⁰.

A judgment or order of a county court for possession of land made in a possession claim against trespassers¹¹ may be enforced in the High Court or a county court¹².

1 County Courts Act 1984 s 21(1) (s 21(1), (2) amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule).

2 County Courts Act 1984 s 21(2) (as amended: see note 1 supra). 'Hereditament' includes both a corporeal and an incorporeal hereditament: s 147(1). Leaseholds are therefore within the definition (*Tomkins v Jones* (1889) 22 QBD 599, CA) and an office such as that of a parish clerk (*Stephenson v Raine* (1853) 2 E & B 744) may be included as being an incorporeal hereditament, but not a local rate (*Stuart v Jones* (1852) 1 E & B 22; *Re Baddeley, Baddeley v Denton* (1849) 4 Exch 508; *Re Knight, Gwynne v Knight* (1848) 1 Exch 802) or a custom (*Lloyd v Jones* (1848) 6 CB 81; *Davis v Walton* (1852) 8 Exch 153).

3 High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(l).

4 For these purposes, 'mortgage' includes a charge and 'mortgagor' and 'mortgagee', which are to be construed accordingly, include any person deriving title under the original mortgagor or mortgagee: County Courts Act 1984 s 21(7). See, however, the text and note 8 infra.

5 For these purposes, 'dwelling-house' includes any building or part of a building which is used as a dwelling: *ibid* s 21(7). The fact that part of the premises comprised in a dwelling-house is used as a shop or office or for business, trade or professional purposes does not prevent the dwelling-house from being a dwelling-house for these purposes: s 21(8).

6 *Ibid* s 21(3); and see *Yorkshire Bank v Hall* [1999] 1 All ER 879, [1999] 1 WLR 1713, CA.

7 *Ibid* s 21(4).

8 *Ibid* s 21(9). As to regulated agreements see CONSUMER CREDIT vol 9(1) (Reissue) PARA 79.

9 A county court has exclusive jurisdiction under the Consumer Credit Act 1974 s 139 (as amended) (re-opening of extortionate credit bargains) and unlimited jurisdiction under s 139(5)(b) (as amended): see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(h).

10 *Ibid* art 8(1A) (added by SI 1995/205).

11 For these purposes, 'a possession claim against trespassers' has the same meaning as in CPR Pt 55: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 8B(2) (art 8B added by SI 2001/2685).

12 High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 8B(1) (as added: see note 11 supra). As to possession proceedings against trespassers see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 660; REAL PROPERTY.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

715 Claims for recovery of land and claims where title is in question

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 9--SI 1991/724 art 2(1)(h) revoked: SI 2008/2934.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/716. Jurisdiction to grant relief against forfeiture for non-payment of rent.

716. Jurisdiction to grant relief against forfeiture for non-payment of rent.

Where a lessor¹ has enforced against a lessee², by re-entry without taking proceedings, a right of re-entry or forfeiture as respects any land for non-payment of rent, the lessee² may at any time within six months from the date on which the lessor re-entered apply to the county court for relief³, and on any such application the court may, if it thinks fit, grant to the lessee such relief as the High Court could have granted⁴, whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings⁵. Where the lessee is granted relief on such an application he holds the land according to the lease without any new lease⁶.

A county court also has power to grant relief against forfeiture for non-payment of rent where a lessor is proceeding by bringing a claim in the court⁷.

1 'Lessor' includes (1) an original or derivative under-lessor; (2) the persons deriving title under a lessor; (3) a person making a grant at a fee farm rent, or a grant securing a rent by condition; and (4) the persons deriving title under such a grantor: County Courts Act 1984 s 140.

2 'Lessee' includes (1) an original or derivative under-lessee; (2) the persons deriving title under a lessee; (3) a grantee under a grant at a fee farm rent, or under a grant securing a rent by condition; and (4) the persons deriving title under such a grantee: *ibid* s 140.

3 Such an application may be made by a person with an interest under a lease of the land derived (whether immediately or otherwise) from the lessee's interest therein in like manner as if he were the lessee; and on any such application the court may make an order which (subject to such terms and conditions as the court thinks fit) vests the land in such a person, as lessee of the lessor, for the remainder of the term of the lease under which he has any such interest as aforesaid, or for any lesser term: *ibid* ss 138(9C), 139(3) (s 138(9A)-(9C), s 139(3) added, and s 138(5), (7) amended, by the Administration of Justice Act 1985 s 55). For these purposes any reference to the land includes a reference to a part of the land: County Courts Act 1984 s 138(9C) (as so added).

4 *Ibid* s 139(2) (amended by the High Court and County Courts Jurisdiction Order 1991, SI 1001/724, art 2(8), Schedule). As to the jurisdiction of the High Court see *PARA 606 et seq ante*. Nothing in the County Courts Act 1984 ss 138, 139 (as amended) is to be taken to affect (1) the power of the court to make any order which it would otherwise have power to make as respects a right of re-entry or forfeiture on any ground other than non-payment of rent; or (2) the Law of Property Act 1925 s 146(4) (relief against forfeiture: see *LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 627*): County Courts Act 1984 s 138(10).

5 High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(l).

6 County Courts Act 1984 ss 138(9B), 139(3) (as added: see note 3 *supra*).

7 See *ibid* s 138(1). In such a case, if one-half year's rent is in arrear at the time of the commencement of the proceedings, the lessor has a right to re-enter for non-payment of that rent and no sufficient distress is to be found on the premises countervailing the arrears then due, the service of the summons in the claim in the prescribed manner stands in lieu of a demand and re-entry: s 139(1). If the lessee pays into court or to the lessor, not less than five clear days before the return day, all the rent in arrear and the costs of the claim, the proceedings cease, and the lessee holds the land according to the lease without any new lease: s 138(2) (s 138(2), (3), (5), (7), (8), (9) amended by the Courts and Legal Services Act 1990 s 125(2), Sch 17 para 17). This does not apply where the lessor is proceeding in the same claim to enforce a right of re-entry or forfeiture on any other ground as well as for non-payment of rent, or to enforce any other claim as well as the right of re-entry or forfeiture and the claim for arrears of rent: County Courts Act 1984 s 138(6). For these purposes, the return day is the date referred to on the face of the form for a possession summons: *Swordheath Properties Ltd v Bolt* [1992] 38 EG 152, CA.

If the proceedings do not cease, and the court at the trial is satisfied that the lessor is entitled to enforce the right of re-entry or forfeiture, the court must order possession of the land to be given to the lessor at the expiration of such period, not being less than four weeks from the date of the order, as the court thinks fit, unless within that period the lessee pays into court or to the lessor all the rent in arrear and the costs of the claim: County Courts Act 1984 s 138(3) (as so amended); and see *R v Norwich County Court Circuit Judge, ex p Wathen* (1976) 33 P & CR 423. 'All the rent in arrear' includes both rent due at the date of service of the summons and rent payable up to the date of the order for possession: *Maryland Estates Ltd v Bar-Joseph* [1998] 3 All ER 193, CA. The court may extend the period so specified at any time before possession of the land is recovered in pursuance of the order: County Courts Act 1984 s 138(4). If, within the period specified in the order, or within that period as so extended, the lessee pays into court or to the lessor all the rent in arrear and the costs of the claim, he is to hold the land according to the lease without any new lease: s 138(5) (as so amended). If he does not make such payment, the order is enforceable in the prescribed manner and so long as the order remains unreversed the lessee is barred from all relief: s 138(7) (as so amended). A mortgagee is a 'lessee' within the meaning of s 138(7) (as so amended) and is barred from relief against forfeiture where his application is made out of time: *United Dominions Trust Ltd v Shellpoint Trustees* (1993) 25 HLR 503, CA. The extension under the County Courts Act 1984 s 138(4) of a period fixed by a court is not, however, to be treated as relief from which the lessee is so barred: see s 138(8). 'All relief' includes the equitable jurisdiction of the High Court to grant relief from forfeiture: *Di Palma v Victoria Square Property Co Ltd* [1985] 2 All ER 676, CA, overruling *Jones v Barnett* [1984] Ch 500, [1984] 3 All ER 129. Where the court extends a period under the County Courts Act 1984 s 138(4) at a time when that period has expired and a warrant has been issued for the possession of the land, the court must suspend the warrant for the extended period; and, if, before the expiration period, the lessee pays into court or to the lessor all the rent in arrear and all the costs of the claim, the court must cancel the warrant: s 138(9) (as so amended). Where the lessor recovers possession of the land at any time after the making of the order under s 138(3) (as so amended) (whether as a result of the enforcement of the order or otherwise) the lessee may, at any time within six months from the date on which the lessor recovers possession, apply to the court for relief; and on any such application the court may, if it thinks fit, grant to the lessee such relief, subject to such terms and conditions, as it thinks fit: s 138(9A) (as added: see note 3 *supra*). Where the lessee is granted relief on such an application he holds the land according to the lease without any new lease: s 138(9B) (as so added). As to making the application see s 138(9C) (as so added); and note 4 *supra*. As to whether an assured tenant is entitled to invoke the protection of s 138 (as amended) see *Artesian Residential Investments Ltd v Beck* [2000] QB 541, [1999] 3 All ER 113, CA; and as to whether a tenant's creditor who is the holder of a charging order can do so see *Croydon (Unique) Ltd v Wright and ors (Crombie and anor intervening)* [2001] Ch 318, [1999] 4 All ER 257, CA. See further *LANDLORD AND TENANT*.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/717. Family provision jurisdiction.

717. Family provision jurisdiction.

A county court has jurisdiction to hear and determine any application for an order making financial provision under the Inheritance (Provision for Family and Dependants) Act 1975¹, including any application for permission to apply for such an order and any application made, in the proceedings on an application for such an order, for an order under any other provision of that Act², whatever the amount involved in the proceedings and whatever the value of any fund or asset connected with the proceedings³.

¹ To make an order under the Inheritance (Provision for Family and Dependants) Act 1975 s 2: see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 691-692.

² County Courts Act 1984 s 25 (amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule).

³ High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1)(I).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/718. Contentious probate jurisdiction.

718. Contentious probate jurisdiction.

Where an application for the grant or revocation of probate or administration has been made¹ through the Principal Registry of the Family Division² or a district probate registry³ and it is shown to the satisfaction of a county court that the value at the date of the death of the deceased of his net estate⁴ does not exceed the county court limit⁵, the county court has the jurisdiction of the High Court in respect of any contentious matter arising in connection with the grant or revocation⁶.

Where an order is made by a county court for the grant or revocation of probate or administration, in pursuance of any jurisdiction conferred upon the court by the above provisions, the district judge⁷ of the county court must transmit to the Principal Registry of the Family Division or a district probate registry, as he thinks convenient, a certificate under the seal of the court⁸ certifying that the order has been made⁹. On the application of a party in favour of whom the order has been made, probate or administration in compliance with the order must be issued from the registry to which the certificate was sent or, as the case may require, the probate or letters of administration previously granted must be recalled or varied by, as the case may be, a district judge of the Principal Registry of the Family Division¹⁰ or the district probate registrar¹¹ according to the effect of the order¹².

1 le under the Supreme Court Act 1981 s 105: see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 124.

2 As to the Principal Registry of the Family Division see PARA 644 ante.

3 As to district probate registries see PARA 645 ante.

4 For these purposes, 'net estate', in relation to a deceased person, means the estate of that person exclusive of any property he was possessed of or entitled to as a trustee and not beneficially, and after making allowances for funeral expenses and for debts and liabilities: County Courts Act 1984 s 32(2) (s 32 substituted by the Administration of Justice Act 1985 s 51(1)).

5 For the meaning of 'the county court limit' see PARA 710 note 14 ante. The limit for these purposes is £30,000: see PARA 710 note 14 ante.

6 County Courts Act 1984 s 32 (as substituted: see note 4 supra).

7 As to county court district judges see PARA 728 post.

8 As to the court seal see PARA 745 post.

9 County Courts Act 1984 s 33(a) (s 33 amended by the Administration of Justice Act 1985 s 67, Sch 7 para 7, Sch 8 Pt III; also amended by virtue of the Courts and Legal Services Act 1990 s 74).

10 As to the district judges of the Principal Registry of the Family Division see PARA 658 ante.

11 As to district probate registrars see PARA 659 ante.

12 County Courts Act 1984 s 33(b) (as amended: see note 9 supra).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/719. Equity jurisdiction.

719. Equity jurisdiction.

A county court has all the jurisdiction of the High Court¹ to hear and determine proceedings:

- 279 (1) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the county court limit²;
- 280 (2) for the execution of any trust, or for a declaration that a trust subsists, or under the Variation of Trusts Act 1958³, where the estate or fund subject, or alleged to be subject, to the trust does not exceed in amount or value the county court limit⁴;
- 281 (3) for foreclosure or redemption of any mortgage or for enforcing any charge or lien, where the amount owing in respect of the mortgage, charge or lien does not exceed the county court limit⁵;
- 282 (4) for the specific performance, or for the rectification, delivery up or cancellation, of any agreement for the sale, purchase or lease of any property, where, in the case of a sale or purchase, the purchase money, or in the case of a lease, the value of the property, does not exceed the county court limit⁶;
- 283 (5) relating to the maintenance or advancement of a minor, where the property of the minor does not exceed in amount or value the county court limit⁷;
- 284 (6) for the dissolution or winding up of any partnership (whether or not the existence of the partnership is in dispute), where the whole assets of the partnership do not exceed in amount or value the county court limit⁸;
- 285 (7) for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the county court limit⁹.

If, as respects certain proceedings in which a county court would have jurisdiction but for the limits of the jurisdiction of the court provided in the relevant enactments¹⁰, the parties agree, by a memorandum signed by them or by their respective legal representatives¹¹ or agents, that a county court specified in the memorandum is to have jurisdiction in the proceedings, then notwithstanding anything in any enactment that court has jurisdiction to hear and determine the proceedings accordingly¹².

1 As to the jurisdiction of the High Court see PARA 606 et seq ante.

2 County Courts Act 1984 s 23(a). For the meaning of 'the county court limit' see PARA 710 note 14 ante. The limit for the purposes of s 23 is £30,000: see PARA 710 note 14 ante. See further EXECUTORS AND ADMINISTRATORS.

3 Ie under the Variation of Trusts Act 1958 s 1 (as amended): see TRUSTS vol 48 (2007 Reissue) PARA 1062 et seq.

4 County Courts Act 1984 s 23(b); and see note 2 supra. It has been held that constructive trusts as well as express trusts are within a county court's jurisdiction under this provision (*Clayton v Renton* (1867) LR 4 Eq 158) and that where the defendant is alleged to hold a tenancy in trust for the claimant, the value of the estate is the value of the tenancy and not the freehold value of the property (*McDonald and Spratt v Barnes* (1951) 101 L Jo 667 (county court), distinguishing *Angel v Jay* [1911] 1 KB 666). All these cases cited in this note were decided under earlier legislation.

5 County Courts Act 1984 s 23(c); and see note 2 supra. See further MORTGAGE vol 77 (2010) PARA 530. It has been held that the fact that the right to redeem is disputed does not oust the county court's jurisdiction (*Powell v Roberts* (1869) LR 9 Eq 169) and that the limit of jurisdiction depends on the amount of the charge at the time the claim is brought (*Shields, Whitley and District Amalgamated Model Building Society v Richards* (1901) 84 LT 587). A claim for possession under a mortgage is a claim for recovery of land and not a claim for foreclosure:

West Penwith RDC v Gunnell [1968] 2 All ER 1005, [1968] 1 WLR 1153, CA. The court may entertain proceedings to enforce a charge or lien even where the person who gave it has become bankrupt: *Medhurst v Golder* (1867) 16 LT 50. All the cases cited in this note were decided under earlier legislation.

6 County Courts Act 1984 s 23(d); and see note 2 supra. See further LANDLORD AND TENANT; SALE OF LAND; SPECIFIC PERFORMANCE; and see also *Angel v Jay* [1911] 1 KB 666; *De Vries v Smallridge* [1928] 1 KB 482, CA; *R v Judge Whitehorne* [1904] 1 KB 827; *Foster v Reeves* [1892] 2 QB 255, CA; *Bourne v McDonald* [1950] 2 KB 422, [1950] 2 All ER 183, CA; *Rushton v Smith* [1976] QB 480, [1975] 2 All ER 905, CA. All the cases cited in this note were decided under earlier legislation.

7 County Courts Act 1984 s 23(e); and see note 2 supra. See further CHILDREN AND YOUNG PERSONS.

8 Ibid s 23(f); and see note 2 supra. See further BANKRUPTCY AND INDIVIDUAL INSOLVENCY; PARTNERSHIP. Proceedings in which the claimant claims a declaration of partnership and an account of his share of the profits are in substance proceedings for the dissolution or winding up of a partnership: *R v Judge Lailey, ex p Koffman* [1932] 1 KB 568, CA (decided under earlier legislation).

9 County Courts Act 1984 s 23(g); and see note 2 supra. It has been held that under this provision a county court may set aside a deed obtained by fraud releasing a judgment debt and costs: *Stephenson v Garnett* [1898] 1 QB 677, CA (decided under earlier legislation). See further MISREPRESENTATION AND FRAUD; MISTAKE.

10 In any proceedings in which a county court would so have jurisdiction by virtue of (1) the Settled Land Act 1925 s 113(3) (as substituted) (see SETTLEMENTS vol 42 (Reissue) PARA 792); (2) the Trustee Act 1925 s 63A (as added) (see TRUSTS vol 48 (2007 Reissue) PARA 642); (3) the Law of Property Act 1925 ss 3(7), 49(4), 66(4), 89(7), 90(3), 91(8), 92(2), 136(3), 181(2), 188(2), Sch 1 Pt III para 3A and Sch 1 Pt IV para 1(3A), (4A) (all as added and amended); (4) the Administration of Estates Act 1925 ss 17(2), 38(4), 41(1A), 43(4) (all as added) (see EXECUTORS AND ADMINISTRATORS); (5) the Leasehold Property (Repairs) Act 1938 s 6(1) (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 456); (6) the Land Charges Act 1972 ss 1(6A), 5(11) (as added) (see LAND CHARGES); and (7) the County Courts Act 1984 s 23 (see heads (1)-(7) in the text) but excluding proceedings under the Variation of Trusts Act 1958 s 1 (as amended) (see head (2) in the text): County Courts Act 1984 s 24(2), (3) (amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule). The County Courts Act 1984 s 24(2) (as so amended) also lists the County Courts Act 1984 s 25 (as amended) but a statutory limit no longer applies in relation to it: see PARA 717 ante.

11 For the meaning of 'legal representatives' see PARA 710 note 11 ante.

12 County Courts Act 1984 s 24(1) (s 24 amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 49(3)).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

719 Equity jurisdiction

NOTES 1-9--Where the High Court has transferred proceedings to a county court pursuant to the 1984 Act s 40(2), notwithstanding s 23, the county court has jurisdiction to hear and determine the proceedings even where the amount exceeds the county court limit: *National Westminster Bank plc v King* [2008] EWHC 280 (Ch), [2008] 2 WLR 1279, [2008] All ER (D) 292 (Feb).

NOTE 10--Reference to 1984 Act s 25 omitted: s 24(2) (amended by the Statute Law (Repeals) Act 2004).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/720. Matrimonial and family jurisdiction.

720. Matrimonial and family jurisdiction.

The Lord Chancellor¹ may by order² designate any county court as a divorce county court³ and any court so designated has jurisdiction to hear and determine any matrimonial cause⁴, except that it has jurisdiction to try such a cause only if it is also designated in the order as a court of trial⁵. The jurisdiction so conferred on a divorce county court is exercisable throughout England and Wales, but rules of court may provide for a matrimonial cause pending in one such court to be heard and determined in another or partly in that court and partly in another⁶. Every matrimonial cause must be commenced in a divorce county court and must be heard and determined in that or another such court unless or except to the extent that it is transferred to the High Court⁷ or unless it is commenced and heard in the Principal Registry of the Family Division⁸.

The Lord Chancellor may also by order designate a divorce county court as a court for the exercise of jurisdiction in matrimonial matters arising under Part III of the Matrimonial and Family Proceedings Act 1984⁹, which relates to financial relief in England and Wales after overseas divorces¹⁰. If so designated, a divorce county court has jurisdiction to exercise any power under that Part¹¹. Any divorce county court has jurisdiction to exercise specified powers under the Matrimonial Causes Act 1973¹² relating to financial relief and the protection of children¹³.

The President of the Family Division may, with the concurrence of the Lord Chancellor, give directions with respect to the distribution and transfer between the High Court and county courts of family business and family proceedings¹⁴. Where a county court has been designated as a family hearing centre¹⁵, the judges of that court who have been authorised by the Lord Chancellor to do so have jurisdiction to deal with private law proceedings. Where a county court has been designated as a care centre¹⁶, the judges of that court who are authorised to do so have jurisdiction to deal with public law proceedings under the Children Act 1989¹⁷. The exercise of matrimonial and family jurisdiction by specified judges is further discussed below¹⁸.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 The power to make such an order is exercisable by statutory instrument: Matrimonial and Family Proceedings Act 1984 s 33(5).

3 As to the designated divorce county courts see PARA 707 note 8 ante.

4 'Matrimonial cause' means an action for divorce, nullity of marriage, or judicial separation or, as from a day to be appointed, an action for nullity of marriage or any marital proceedings under the Family Law Act 1996: Matrimonial and Family Proceedings Act 1984 s 32 (definition amended by the Family Law Act 1986 s 68(1), Sch 1 para 27 and prospectively substituted with savings by the Family Law Act 1996 s 66(1), Sch 8 para 32(5), as from a day to be appointed).

5 Matrimonial and Family Proceedings Act 1984 s 33(1).

6 Ibid s 33(2). See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 732.

7 Ie under ibid 39 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 746) or under the County Courts Act 1984 s 41 (as amended) (see PARA 710 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 69): Matrimonial and Family Proceedings Act 1984 s 33(3).

8 See ibid s 42 (as amended). As to the Principal Registry of the Family Division see PARA 644 ante.

9 le under *ibid* Pt III (ss 12-27) (as amended): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 530.

10 *Ibid* s 33(4).

11 *Ibid* s 34(1)(b).

12 le jurisdiction to exercise any power exercisable under the Matrimonial Causes Act 1973 Pt II (ss 21-40A) (as amended) or Pt III (s 41) (as substituted and amended) in connection with any petition, decree or order pending in or made by such a court and to exercise any power under s 27 (as amended) (financial provision orders) or s 35 (as amended) (alterations of agreements during lives of the parties); but not, by virtue of this provision, jurisdiction to exercise any power under s 32 (as prospectively amended) (payment of certain arrears), s 33 (as prospectively amended) (orders for repayment in certain cases), s 36 (as amended) (alterations of agreements after death of a party) or s 38 (as amended) (orders for repayment in certain cases after remarriage), although nothing in this provision prejudices the exercise by a county court of any jurisdiction conferred on county courts by any of those sections: Matrimonial and Family Proceedings Act 1984 s 34(1)(a), (3). See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 733.

13 See note 12 *supra*.

14 Matrimonial and Family Proceedings Act 1984 s 37. See further CHILDREN AND YOUNG PERSONS; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 744.

15 See the Children (Allocation of Proceedings) Order 1991, SI 1991/1667, art 2(b); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 211.

16 See *ibid* art 2(c); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 211.

17 Broadly the distinction between private law and public law children cases is that the former are proceedings involving disputes between parents, relatives or other individuals, relating to such matters as residence, contact and specific issue, prohibited steps and parental responsibility orders; and the latter are proceedings relating to children brought by public authorities, in particular applications for care orders and supervision orders. For the provisions relating to the types of children cases which can be dealt with by particular categories of judge see the *Family Proceedings (Allocation to Judiciary) Directions 1999* [1999] 2 FLR 799; para 724 *post*; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 210.

18 See PARA 724 *post*.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

720 Matrimonial and family jurisdiction

TEXT AND NOTES--See also Matrimonial and Family Proceedings Act 1984 s 36A (jurisdiction of county courts in civil partnership causes); s 36B (jurisdiction of civil partnership proceedings county courts as respects financial relief and protection of children); s 36C (consideration of agreements or arrangements); s 36D (assignment of circuit judges to civil partnership proceedings) (all added by Civil Partnership Act 2004 Sch 27 para 92; 1984 Act ss 36A, 36D amended by Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006, SI 2006/1016).

TEXT AND NOTES 1-10--1984 Act s 33 amended: Constitutional Reform Act 2005 Sch 4 para 172.

TEXT AND NOTE 14--The Lord Chancellor's function under the 1984 Act s 37 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(i) General and Special Jurisdiction/721. Jurisdiction by special statute.

721. Jurisdiction by special statute.

In addition to their general jurisdiction under the County Courts Act 1984 and their jurisdiction in matrimonial¹, probate², replevin³, interpleader⁴ and administration order proceedings⁵, county courts have special jurisdiction under a number of statutes dealing with a variety of subjects; for example proceedings under the Protection from Harassment Act 1997 may be brought in a county court⁶ as may certain proceedings under the Mental Health Act 1983⁷. The relevant statutory provisions are set out in this work under the titles to which they relate.

The procedure to be followed under a statute conferring special jurisdiction on county courts may be prescribed in the Act itself or in rules made under it, or in the Civil Procedure Rules ('CPR') and supplementary practice directions⁸ or the preserved and amended County Court Rules ('CCR') set out in Schedule 2 to the CPR⁹. In the absence of such special provision, the normal procedure under the CPR applies¹⁰.

The county court's jurisdiction under a particular statute may be either exclusive or concurrent with the jurisdiction of the High Court or of courts of summary jurisdiction, and it may be either unlimited¹¹ or subject to an expressed limit¹². For example, in the case of the Rent Act 1977 the county court has jurisdiction to deal with any claim or other proceedings arising out of certain provisions of the Act, notwithstanding that by reason of the amount of the claim or otherwise the case would not otherwise be within the county court's jurisdiction, and if a person takes proceedings under those provisions of the Act in the High Court which he could have taken in the county court, he will not be entitled to recover any costs¹³.

1 See PARA 720 ante; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

2 See PARA 718 ante; and EXECUTORS AND ADMINISTRATORS.

3 See PARA 714 ante; and DISTRESS vol 13 (2007 Reissue) PARA 1081 et seq.

4 See CIVIL PROCEDURE vol 12 (2009) PARA 1628 et seq.

5 See the County Courts Act 1984 Pt VI (ss 112-117) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

6 See the Protection from Harassment Act 1997 s 3; and TORT vol 45 (Reissue) PARA 457.

7 See eg the Mental Health Act 1983 ss 10(3), 30, 31; and MENTAL HEALTH.

8 As to the CPR see PARA 575 ante.

9 See eg CPR Sch 2 CCR Ord 44 (proceedings under the Agricultural Holdings Act 1986); CPR Sch 2 CCR Ord 45 (proceedings under the Representation of the People Act 1983); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARAS 189-192, ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARAS 358, 364.

10 See generally CIVIL PROCEDURE.

11 County court jurisdiction under many statutes is now governed by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724 (as amended); see PARA 579 ante. A county court has unlimited jurisdiction under (1) the Law of Property Act 1925 ss 146, 147 (as amended); (2) the Landlord and Tenant Act 1954 s 63(2) (as amended); (3) the Mines and Quarries (Tips) Act 1969 s 28 (as substituted); (4) the Taxes Management Act 1970 s 66 (as amended); (5) the Administration of Justice Act 1970 s 41 (as amended); (6) the Consumer Credit

Act 1974 s 139(5)(b) (as amended); (7) the Torts (Interference with Goods) Act 1977 s 13 (as amended); (8) the Magistrates' Courts Act 1980 s 87 (as amended); (9) the Audit Commission Act 1998 ss 17, 18 (as respectively amended and prospectively repealed); (10) the Copyright, Designs and Patents Act 1988 ss 99, 102(5), s 114 (as amended), s 195, s 204 (as amended), s 230, s 231 (as amended) and s 235(5); (11) the Housing Act 1988 s 40 (as amended); and (12) the Trusts of Land and Appointment of Trustees Act 1996 ss 13, 14; as well as under the following provisions of the County Courts Act 1984: (a) s 15 (as amended) (contract and tort claims: see PARA 712 ante; but see s 15(2) (as amended); and PARA 722 post); (b) s 16 (as amended) (money recoverable by statute: see PARA 713 ante); (c) s 21 (as amended) (claims for the recovery of land: see PARA 715 ante); (d) s 25 (as amended) (applications for orders under the Inheritance (Provision for Family and Dependents) Act 1975 s 2: see PARA 717 ante); and (e) the County Courts Act 1984 s 139 (as amended) (forfeiture for non-payment of rent: see PARA 716 ante): see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(1) (amended by SI 1996/3141; and by virtue of the Audit Commission Act 1998 s 54(2), Sch 4 para 4(1)).

12 Under the High Court and County Courts Jurisdiction Order 1991, SI 1991/724 (as amended), a county court has jurisdiction under:

- 6 (1) the Local Land Charges Act 1975 s 10 (as amended) and the Rentcharges Act 1977 s 10(4) (as amended) where the sum concerned or amount claimed does not exceed £5,000 (see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(2));
- 7 (2) the following provisions of the Law of Property Act 1925 where the capital value of the land or interest in land which is to be dealt with does not exceed £30,000: (a) ss 3, 49, 66, 181 and 188 (all as amended); (b) Sch 1 Pt III para 3 proviso (iii); (c) Sch 1 Pt IV para 1(3) proviso (v); (d) Sch 1 Pt IV para 1(4) provisos (iii), (iv) (as amended) (see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(3));
- 8 (3) the Law of Property Act 1925 ss 89-92 (as amended) where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed £30,000 (see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(4));
- 9 (4) the Law of Property Act 1925 s 136(1), proviso where the amount or value of the debt or thing in action does not exceed £30,000 (see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(5));
- 10 (5) the Land Charges Act 1972 s 1(6): (a) in the case of a land charge of Class C(i), C(ii) or D(i), if the amount does not exceed £30,000; (b) in the case of a land charge of Class C(iii), if it is for a specified capital sum of money not exceeding £30,000 or, where it is not for a specified capital sum, if the capital value of the land affected does not exceed £30,000; (c) in the case of a land charge of Class A, Class B, Class C(iv), Class D(ii), Class D(iii) or Class E, if the capital value of the land affected does not exceed £30,000; (d) in the case of a land charge of Class F, if the land affected by it is the subject of an order made by the court under the Matrimonial Homes Act 1983 s 1 (repealed) or the Family Law Act 1996 s 33 or an application for such an order relating to that land has been made to the court; (e) in a case where an application under the Deeds of Arrangement Act 1914 s 23 (as amended) could be entertained by the court (see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(6));
- 11 (6) the Solicitors Act 1974 s 69-71 (as amended) where a bill of costs relates wholly or partly to contentious business done in a county court and the amount of the bill does not exceed £5,000 (see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(7)).

13 See the Rent Act 1977 s 141 (as amended); *Tideway Investment and Property Holdings Ltd v Wellwood* [1952] Ch 791, [1952] 2 All ER 514, CA (decided under earlier legislation); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 981.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

721 Jurisdiction by special statute

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 9--CPR Sch 2 CCR Ord 44(1)-(3) revoked: SI 2006/2805. CPR Sch 2 CCR Ord 45 revoked: SI 2007/2204.

NOTE 11--SI 1991/724 art 2(1) further amended: SI 2005/587.

NOTE 12--The county courts at Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle upon Tyne have jurisdiction under the Trade Marks Act 1994 ss 15, 16, 19, 23(5), 25(4)(b), 30, 31, 46, 47, 64, 73, 74, Sch 1 para 12 and Sch 2 para 14, to include jurisdiction to hear and determine any claims or matters ancillary to, or arising from proceedings brought under such provisions: SI 1991/724 art 2(7A), (7B) (added by SI 2005/587).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(ii) Exceptions to Jurisdiction/722. Exceptions to jurisdiction; in general.

(ii) Exceptions to Jurisdiction

722. Exceptions to jurisdiction; in general.

No claim may be brought in a county court on any judgment of the High Court¹.

A county court has no jurisdiction in the following areas which are reserved to the High Court:

- 286 (1) Admiralty jurisdiction²;
- 287 (2) jurisdiction to grant writs of habeas corpus³ and applications for judicial review⁴;
- 288 (3) jurisdiction to hear claims for damages in respect of a judicial act under the Human Rights Act 1998⁵;
- 289 (4) wardship jurisdiction⁶;
- 290 (5) jurisdiction to restrain vexatious litigation⁷.

Additionally, except as otherwise provided in the County Courts Act 1984⁸, a county court does not have jurisdiction to hear and determine any claim in which the title to any toll, fair, market or franchise is in question⁹ or any claim for libel or slander¹⁰. Such claims are heard in the High Court unless the parties agree in writing that a county court may hear them¹¹.

A county court has no jurisdiction to make a declaration of incompatibility under the Human Rights Act 1998¹².

A county court's competence to entertain a claim which would normally be within the court's general jurisdiction may be excluded by express statutory provision that the claim is only to be enforced in some other manner. For example, under the Agricultural Holdings Act 1986 a dispute about rent must, in certain circumstances, be determined by arbitration¹³, but this does

not preclude a county court from deciding whether an agreement is one to which the Act applies¹⁴.

1 County Courts Act 1984 s 36. This protects an executor from being sued in the county court for a debt founded on a judgment of the High Court against his testator: *Cheetham v Hollingworth* [1914] WN 25 (decided under earlier legislation). A claim cannot be maintained in the High Court upon a county court judgment (*Austin v Mills* (1853) 9 Exch 288; *Berkeley v Elderkin* (1853) 1 E & B 805), but it is submitted that a county court judgment may form the subject of a counterclaim in the High Court.

2 County courts no longer have Admiralty jurisdiction: see PARA 707 the text and note 16 ante, para 710 note 10 ante.

3 le except in respect of applications made by a parent or guardian of a minor for a writ of habeas corpus concerning the custody of a minor: see *Practice Direction--How to Start Proceedings--The Claim Form* PD 7A para 2.6; and CIVIL PROCEDURE vol 11 (2009) PARA 116. As to habeas corpus see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq.

4 See *Practice Direction--How to Start Proceedings--The Claim Form* PD 7A para 2.6; and CIVIL PROCEDURE vol 11 (2009) PARA 116. As to judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq. See also the Courts and Legal Services Act 1990 s 1(10); and PARA 579 ante.

5 See CPR 7.11(1); and CIVIL PROCEDURE vol 11 (2009) PARA 116. As to such claims see the Human Rights Act 1998 s 9; and PARA 316 ante.

6 See the Supreme Court Act 1981 s 41 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 218 et seq.

7 See *ibid* s 42 (as amended); and CIVIL PROCEDURE vol 11 (2009) PARA 258.

8 As to the parties' ability to confer jurisdiction in certain proceedings on a specified county court see the County Courts Act 1984 s 18 (as amended); and PARA 710 ante.

9 'Toll' has been held to include a tonnage rate payable by ships to certain harbour authorities (*R v Everett* (1852) 1 E & B 273, sub nom *Adey v Deputy Master of Trinity House* (1852) 22 LJQB 3, where a dispute whether a tonnage rate was payable in respect of two voyages or only in respect of one was held not to be within the county court's jurisdiction) but not a charge by a railway under a private Act for bringing back empty coal trucks (*Hunt v Great Northern Rly Co* (1851) 10 CB 900, where a dispute as to the amount of the charge and the time which it was payable was held to be within the county court's jurisdiction). 'Franchise' does not include a right claimed by custom: *Davis v Walton* (1852) 8 Exch 153 (custom of the Thames to place vessels so that they projected over adjoining wharves).

10 County Courts Act 1984 s 15(2) (amended by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule).

11 See *Practice Direction--How to Start Proceedings--The Claim Form* PD 7A para 2.9; and CIVIL PROCEDURE vol 11 (2009) PARA 116.

12 Human Rights Act 1998 s 4(5).

13 See the Agricultural Holdings Act 1986 s 12; and AGRICULTURAL LAND vol 1 (2008) PARA 338.

14 See *Goldsack v Shore* [1950] 1 KB 708, [1950] 1 All ER 276, CA (decided under earlier legislation).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

722 Exceptions to jurisdiction; in general

TEXT AND NOTE 12--Human Rights Act 1998 s 4(5) amended: Constitutional Reform Act 2005 Sch 9 para 66(2) (in force 1 October 2009: SI 2009/1604); Mental Capacity Act 2005 Sch 6 para 43; Armed Forces Act 2006 Sch 16 para 156.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(3) JURISDICTION/(ii) Exceptions to Jurisdiction/723. No jurisdiction where a different tribunal is specified.

723. No jurisdiction where a different tribunal is specified.

Where a tribunal with exclusive jurisdiction has been specified by a statute to deal with claims arising under that statute, the county courts' jurisdiction to deal with those claims is ousted¹, for where an Act creates an obligation and enforces the performance of it in a specified manner only, the general rule is that performance cannot be enforced in any other manner². This rule does not apply where no tribunal is specified³, or where the statute does not give the tribunal indicated exclusive jurisdiction⁴, or where the question is one which is left to be decided by the ordinary courts⁵; neither is it operative where additional jurisdiction is conferred on certain county courts without excluding claims relative to it from the jurisdiction of ordinary county courts⁶. When the remedy under a special statute is no longer available, a claim for breach of a statutory obligation imposed by it can be enforced under the general jurisdiction⁷.

1 See the County Courts Act 1984 s 16 (as amended); and PARA 713 ante. See also *Hulme v Ferranti* [1918] 2 KB 426 (exclusion of claim within jurisdiction of munitions tribunal); *West Suffolk County Council v Olorenshaw* [1918] 2 KB 687 (dispute to be determined by specified government department); *Great Western Rly Co v Phillips & Co Ltd* [1908] AC 101, HL (claim within jurisdiction of arbitrator); *Bailey v Co-operative Wholesale Society (Insurance Section)* [1914] 2 KB 233 (dispute between insured member and approved society to be decided by general delegates' meeting); *Denton v Marshall* (1863) 1 H & C 654 (dispute between member and trustees of friendly society to be settled by committee of society). Cf *Horrell v Lord St John of Bletso* [1928] 2 KB 616 at 620: 'If the prima facie right of a person to bring an action in the High Court is to be taken away, it must be by express words or by necessary implication from the words used'.

2 *Doe d Bishop of Rochester v Bridges* (1831) 1 B & Ad 847 at 859; *Pasmore v Oswaldwistle UDC* [1898] AC 387 at 394, HL; *Liverpool Corp'n v Hope* [1938] 1 KB 751, [1938] 1 All ER 492, CA (arrears of rates recoverable only by distress). See also STATUTES.

3 *Ames v Higdon* (1893) 69 LT 292 (damages under what is now the Law of Property Act 1925 s 104(2)).

4 *Stuart v Jones* (1852) 1 E & B 22 (claims to be brought in any court of record; subsequent Act giving county court jurisdiction); *Crystal Palace Gas Co v Idris & Co* (1900) 82 LT 200; *R v Philbrick, ex p Edwards* [1905] 2 KB 108 (action for unreasonable charges made by a bailiff in distraining); see also *Sturley v Powell* [1930] 1 KB 677; *Great Yarmouth Corp'n v Gibson* [1956] 1 QB 573, [1956] 1 All ER 113, CA.

5 *Goldsack v Shore* [1950] 1 KB 708, [1950] 1 All ER 276, CA (question whether agreement one to which Act applied); *Gulliver v Catt* [1952] 2 QB 308, [1952] 1 All ER 929, CA; *Kent v Conniff* [1953] 1 QB 361, [1953] 1 All ER 155, CA. Common law remedies are still open if not expressly excluded: *Crystal Palace Gas Co v Idris & Co* (1900) 82 LT 200.

6 *R v Southend County Court Judge* (1884) 13 QBD 142 (action within Admiralty jurisdiction of another county court). County courts no longer exercise Admiralty jurisdiction: see PARA 707 the text and note 16, para 710 note 10 ante.

7 *Walker v Canal Co* (1913) 2 LJCCR 112, DC (canal commissioners ceasing to exist).

UPDATE**701-746 County Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(4) JUDGES/724. Assignment of judges.

(4) JUDGES**724. Assignment of judges.**

By virtue of his office every circuit judge¹ is capable of sitting as a judge for any county court district in England and Wales². The Lord Chancellor³ must assign one or more circuit judges to each district and may from time to time vary the assignment among the districts⁴. Subject to the Lord Chancellor's directions, in any case where more than one circuit judge is assigned to a district, any function conferred by or under the County Courts Act 1984 on the judge for a district may be exercised by any of the circuit judges for the time being assigned to that district⁵.

Every judge of the Court of Appeal⁶ and of the High Court⁷, and every recorder⁸, is by virtue of his office capable of sitting as a judge for any county court district and, if he consents to do so, sits at such times and on such occasions as the Lord Chancellor considers desirable⁹.

Notwithstanding that he is not for the time being assigned to a particular district, a circuit judge must sit as a judge of that district at such times and on such occasions as the Lord Chancellor may direct, and may sit as a judge of that district in any case where it appears to him that the judge of that district is not, or none of the judges of that district is, available to deal with the case¹⁰.

In relation to a county court, 'judge' for the purposes of the County Courts Act 1984 means a judge assigned to the district of that court, and any person sitting as a judge for that district, under the above provisions¹¹.

The Lord Chancellor may, with the concurrence of the President of the Family Division¹², give directions that, in such circumstances as may be specified¹³, any family proceedings¹⁴ which are within the jurisdiction of county courts¹⁵ or any specified description of such proceedings, are to be allocated to specified judges¹⁶ or to specified descriptions of judge¹⁷; and any such directions have effect regardless of any rules of court¹⁸. The jurisdiction conferred on divorce county courts¹⁹, so far as it is exercisable by judges of such courts, must be exercised by such circuit judges as the Lord Chancellor may direct²⁰. Subject to this, any jurisdiction and powers conferred by the County Courts Act 1984 or any other Act on a county court or on the judge of a county court may be exercised by any judge of the court²¹.

1 As to circuit judges see PARAS 522-525 et seq ante.

- 2 County Courts Act 1984 s 5(1). As to county court districts see PARAS 707-708 ante.
- 3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 4 County Courts Act 1984 s 5(1).
- 5 Ibid s 5(2).
- 6 As to Court of Appeal judges see PARAS 515, 637 ante.
- 7 As to High Court judges see PARAS 515, 602, 619 ante.
- 8 As to recorders see PARAS 526-528 ante.
- 9 County Courts Act 1984 s 5(3).
- 10 Ibid s 5(4).
- 11 Ibid s 147(1).
- 12 As to the President of the Family Division see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.
- 13 For these purposes, 'specified' means specified in the directions: Courts and Legal Services Act 1990 s 9(5).
- 14 For these purposes, 'family proceedings' has the same meaning as in the Matrimonial and Family Proceedings Act 1984 and also includes any other proceedings which are family proceedings for the purposes of the Children Act 1989: Courts and Legal Services Act 1990 s 9(5). See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 199; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 744.
- 15 For these purposes, 'county court' includes the Principal Registry of the Family Division of the High Court, in so far as it is treated as a county court: ibid s 9(4). As to the Principal Registry of the Family Division see PARA 644 ante. As to the matrimonial and family jurisdiction of county courts see PARA 720 ante.
- 16 For these purposes, 'judge' means any person who: (1) is capable of sitting as a judge for a county court district; (2) is a district judge, an assistant district judge or a deputy district judge; or (3) is a district judge of the Principal Registry of the Family Division of the High Court: ibid s 9(5). As to district judges and deputy district judges in the High Court see PARAS 661-662 ante; as to district judges in the Principal Registry of the Family Division see PARA 658 ante; and as to county court district judges see PARA 728 post.
- 17 Ibid s 9(1). In exercise of the power so conferred the Lord Chancellor, with the concurrence of the President of the Family Division, made the *Family Proceedings (Allocation to Judiciary) Directions 1999* [1999] 2 FLR 799: see PARA 720 ante; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 210; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 749.
- 18 Courts and Legal Services Act 1990 s 9(2). As to family proceedings rules see PARA 576 ante. Where, however, any directions have been so given allocating any proceedings to specified judges, the validity of anything done by a judge in, or in relation to, the proceedings is not to be called into question by reason only of the fact that he was not a specified judge: s 9(3).
- 19 As to divorce county courts see PARA 707 the text and note 8 ante; and as to the jurisdiction of such courts see PARA 720 the text and notes 9-13 ante.
- 20 Matrimonial and Family Proceedings Act 1984 s 36.
- 21 County Courts Act 1984 s 37(1). This applies to jurisdiction and power conferred on all county courts or judges of county courts or on any particular county court or the judge of any particular county court: s 37(2). As to county court jurisdiction see PARA 710 et seq ante.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

724 Assignment of judges

TEXT AND NOTES 1-10--County Courts Act 1984 s 5 amended: Constitutional Reform Act 2005 Sch 4 para 163.

TEXT AND NOTE 17--1990 Act s 9(1) amended: 2005 Act Sch 4 para 213.

TEXT AND NOTE 20--1984 Act s 36 amended: 2005 Act Sch 4 para 173.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(4) JUDGES/725. Liability of judges.

725. Liability of judges.

In accordance with general principles, a judge sitting in a county court, as a judge of a court of record¹, is not civilly liable for judicial acts done by him within the scope of his jurisdiction², or even for slander spoken by him in the course of a judgment³; but he is so liable if, when not misinformed as to facts, he acts without jurisdiction and under a mistaken idea that he possesses jurisdiction⁴. A criminal information⁵ will not be granted against him for anything done by him in his office unless it be shown that he acted from a corrupt motive⁶, and not even then where the complainant has elected his remedy by previously making a complaint to the Lord Chancellor⁷.

Where a judge acts in breach of a person's Convention rights, proceedings may be brought by that person under the Human Rights Act 1998, but only by exercising a right of appeal or in such other forum as may be prescribed by rules⁸.

1 See PARA 745 post.

2 *Kemp v Neville* (1861) 10 CBNS 523; *Dawkins v Lord Paulet* (1869) LR 5 QB 94; *Fray v Blackburn* (1863) 3 B & S 576; *Anderson v Gorrie* [1895] 1 QB 668, CA; *Tughan v Craig* [1918] 1 IR 245; see further LIBEL AND SLANDER.

3 *Scott v Stansfield* (1868) LR 3 Exch 220.

4 *Houlden v Smith* (1850) 14 QB 841. See also *Sirros v Moore* (1974) 118 Sol Jo 661, CA; and PARA 309 the text and notes 26-27 ante.

5 See CRIMINAL LAW, EVIDENCE AND PROCEDURE.

6 *Re Anon* (1852) 16 Jur 995.

7 *R v Marshall* (1855) 4 E & B 475; *Ex p Ramshay* (1852) 18 QB 173.

8 See PARA 316 the text and notes 12-17 ante.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(i) In general/726. Meaning of 'officer'.

(5) COURT OFFICERS

(i) In general

726. Meaning of 'officer'.

In relation to a county court 'officer' means any district judge¹ or deputy district judge² of the court, and any clerk, bailiff, usher or messenger in the service of the court³. The administrative duties of district judges are discussed below⁴ and those of bailiffs are discussed in more detail elsewhere in this work⁵.

1 As to district judges in county courts see PARA 728 post.

2 As to deputy district judges see PARA 728 post.

3 County Courts Act 1984 s 147(1) (definition amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)). This definition also refers, by virtue of s 74(1), (3), to 'assistant district judges' but the provisions relating to such persons have been repealed.

4 See PARA 729 post.

5 See CIVIL PROCEDURE vol 12 (2009) PARAS 1258 et seq, 1340; SHERIFFS.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(i) In general/727. Abolition of office of high bailiff.

727. Abolition of office of high bailiff.

At one time every county court had a high bailiff whose duties were, by himself or by the bailiffs appointed to assist him, to serve all process and execute all warrants issued out of the court, except where otherwise specially provided¹. No appointment has been made to this office since 1924². No further appointments may now be made³ and references to a high bailiff in any enactment, Order in Council, order, rule, regulation or any document must be construed as a reference to a district judge⁴.

1 See the County Courts Act 1888 ss 33, 35 (repealed).

2 The duties devolved on the registrar (now known as the district judge) by virtue of his office when at any time the office of high bailiff fell vacant: County Courts Act 1934 s 189(1)(a) (repealed), re-enacting part of the County Courts Act 1924 s 1(5) (repealed). The last surviving high bailiff retired in June 1958.

3 See the County Courts Act 1934 s 189(1)(a) (repealed); and note 2 *supra*.

4 County Courts Act 1984 s 148(2), Sch 3 para 7 (amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)). As to district judges see PARA 728 *post*.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(ii) District Judges/728. District judges and deputy district judges; in general.

(ii) District Judges

728. District judges and deputy district judges; in general.

There is a district judge for each county court district¹, who is appointed by the Lord Chancellor² and paid such salary as the Lord Chancellor may, with the concurrence of the Treasury, direct³. The Lord Chancellor may, if he thinks fit, appoint a person to be district judge for two or more districts⁴ or appoint two or more persons to execute jointly the office of district judge for a district⁵. The qualifications and tenure of office of district judges, and the provision made for their training, retirement and pensions, have already been discussed⁶.

On the death, resignation or removal⁷ of a joint district judge, the Lord Chancellor may either appoint another person to be joint district judge in his place or give directions that the continuing district judge is to act as sole district judge or, as the case may be, that the continuing district judges are to execute jointly the office of district judge⁸.

The district judge for any district is capable of acting in any other district for the district judge of that other district⁹.

If it appears to the Lord Chancellor that it is expedient as a temporary measure to make such an appointment in order to facilitate the disposal of business in county courts, he may appoint a person to be deputy district judge for any county court district during such period or on such occasions as the Lord Chancellor thinks fit and a deputy district judge, while acting under his appointment, has the same powers and is subject to the same liabilities as if he were the district judge¹⁰. The Lord Chancellor may pay to any person so appointed as deputy district judge such remuneration and allowances as he may, with the approval of the Treasury, determine¹¹.

1 As to county court districts see PARA 707 ante.

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 County Courts Act 1984 s 6(1) (ss 6, 8 amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 42). Salaries of district judges are paid out of money provided by Parliament: County Courts Act 1984 s 132(a).

4 Ibid s 6(2) (as amended: see note 3 supra).

5 Ibid s 6(3) (as amended: see note 3 supra). In any case where joint district judges are appointed, the Lord Chancellor may give directions with respect to the division between them of the duties of the office: s 6(3) (as so amended).

6 As to the qualifications of district judges and their tenure of office see PARA 515 ante; as to their training see PARAS 531-534 ante; as to their retirement see PARAS 535-536 ante; and as to judicial pensions see PARA 537 et seq ante.

7 As to when a district judge may be removed from office see PARA 515 ante.

8 County Courts Act 1984 s 6(4) (as amended: see note 3 supra).

9 Ibid s 6(5) (as amended: see note 3 supra).

10 Ibid s 8(1) (as amended: see note 3 supra). Any appointment of a person as a deputy district judge must not, if he has previously held office as a district judge, be such as to extend beyond the day on which he attains the age of 75 years, and in any other case must not be such as to extend beyond the day on which he attains the age of 70 years, subject to the Lord Chancellor's power under the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) to authorise his continuance in office up to the age of 75 (see PARA 535 ante): County Courts Act 1984 s 8(1A) (added by the Judicial Pensions and Retirement Act 1993 s 26(100), Sch 6 para 17(1)).

11 County Courts Act 1984 s 8(3) (as amended: see note 3 supra). Such remuneration and allowances are paid out of money provided by Parliament: s 132(a).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

728 District judges and deputy district judges; in general

TEXT AND NOTES 1-9--Her Majesty may, on the recommendation of the Lord Chancellor, appoint district judges: County Courts Act 1984 s 6(1) (substituted by Constitutional Reform Act 2005 Sch 3 para 1(1)). The Lord Chief Justice, after consulting the Lord Chancellor (1) must assign each district judge to one or more districts; (2) may change an assignment so as to assign the district judge to a different district or districts: 1984 Act s 6(2) (as so substituted). A reference in any enactment or other instrument to the district judge for a district or of a county court is a reference to any district judge assigned to the district concerned: s 6(3) (as so substituted). Every district judge is, by virtue of his office, capable of acting in any district whether or not assigned to it, but may do so only in accordance with arrangements made by or on behalf of the Lord Chief Justice: s 6(4) (as so substituted). A district judge is to be paid such salary as may be determined by the Lord Chancellor with the concurrence of the Treasury: s 6(5) (as so substituted). A salary payable under s 6 may be increased but not reduced by a determination or further determination under s 6: s 6(6) (as so substituted). The County Courts Act 1984 s 6 as substituted applies to a district judge holding office by virtue of an appointment made before the commencement of the Constitutional Reform Act 2005 Sch 3 para 1(1) (ie before 3 April 2006: see SI 2006/1014) as if he had been assigned to the district or districts for which he was appointed: 2005 Act Sch 3 para 1(2).

Any recommendation for appointment to the office of district judge in exercise of the function under the 1984 Act s 6(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 1984 Act s 6(2): s 6(7) (added by Tribunals, Courts and Enforcement Act 2007 Sch 11 para 6).

TEXT AND NOTES 10, 11--The Lord Chancellor's functions under the 1984 Act s 8(1), (3) are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 10--If it appears to the Lord Chancellor that it is expedient to do so in order to facilitate the disposal of business in the county courts, he may appoint a person to be a deputy district judge: 1984 Act s 8(1) (s 8(1) as originally enacted, substituted as s 8(1), (1ZA)-(1ZC), by Tribunals, Courts and Enforcement Act 2007 Sch 11 para 7(2)). A person is qualified for appointment under the 1984 Act s 8(1) only if the person (1) is qualified for appointment as a district judge, or (2) holds, or has held, the office of district judge: s 8(1ZA) (as substituted). The Lord Chancellor may not appoint a person under s 8(1) without the concurrence of the Lord Chief Justice if the person (a) holds the office of district judge, or (b) ceased to hold the office of district judge within two years ending with the date when the appointment takes effect: s 8(1ZB) (as substituted). The Constitutional Reform Act 2005 s 85 (selection of certain office holders) does not apply to an appointment to which the 1984 Act s 8(1ZB) applies: s 8(1ZC) (as substituted). For effect see 2007 Act Sch 11 para 10. See further NOTE 10.

Any appointment to the office of deputy district judge in exercise of the function under the 1984 Act s 8(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 2 (amended by 2007 Act Sch 11 para 15), in accordance with the 2005 Act ss 85-93, 96.

NOTE 10--1984 Act s 8(1A) amended: 2007 Act Sch 11 para 7(3). The Lord Chief Justice, after consulting the Lord Chancellor (1) may assign a deputy district judge appointed under the 1984 Act s 8 to one or more districts; (2) may change an assignment so as to assign the deputy district judge to a different district or districts (or to no district): s

8(1B) (added by 2007 Act Sch 11 para 7(4)). A deputy district judge appointed under the 1984 Act s 8 and assigned to a district has, while acting under his assignment, the same powers as if he were a district judge assigned to the district: s 8(1C) (as added). Every deputy district judge appointed under s 8 is, by virtue of his office, capable of acting as a district judge in any district to which he is not assigned, but may act in a district to which he is not assigned only in accordance with arrangements made by or on behalf of the Lord Chief Justice: s 8(1D) (as added). For effect see 2007 Act Sch 11 para 10.

The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) to exercise his functions under the 1984 Act s 8(1ZB) or (1B): s 8(4) (added by 2007 Act Sch 11 para 7(5)).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(ii) District Judges/729. Administrative and executive duties of district judges.

729. Administrative and executive duties of district judges.

Under the County Courts Act 1984 and the Civil Procedure Rules, a district judge¹ has numerous duties of an administrative or executive character, which he performs either personally or by the clerks, bailiffs and other officers appointed to assist him².

He must keep or cause to be kept such records of and in relation to the proceedings in his court as the Lord Chancellor³ may prescribe⁴. The prescribed records are a record of:

- 291 (1) claims (including requests for judgment in default⁵) commenced or transferred to the court⁶, which must contain the names, addresses and descriptions (if any) of the parties, the nature and amount of the claim or the nature of the relief sought, and concise minutes of the proceedings, including a note of any judgment given, order made or decree granted⁷;
- 292 (2) judgment summonses⁸, which must contain the name of the judgment creditor and the name, address and description (if any) of the judgment debtor, the amount in respect of which the judgment summons was issued and concise minutes of the proceedings, including a note of any order made⁹;
- 293 (3) interpleader proceedings¹⁰, which must contain the names, addresses and descriptions (if any) of the parties other than himself, the nature of the relief sought and concise minutes of the proceedings, including a note of any order made¹¹;
- 294 (4) warrants and orders of commitment issued by the court¹², which must contain the name of the judgment creditor and the name, address and description (if any) of the judgment debtor, the amount in respect of which the warrant or order was issued, a note of any return made to the warrant or order and a note of any suspension or reissue of the warrant or order; additionally, in the case of a warrant of execution, the record must contain a note of any claim made to or in respect of any goods seized in execution under the warrant and of any subsequent proceedings thereon¹³;
- 295 (5) warrants and orders of commitment received from other courts for execution¹⁴ which must contain a note of any claim made to or in respect of any goods seized in execution under the warrant and of any subsequent proceedings thereon¹⁵;
- 296 (6) proceedings under Part I of the Family Law Act 1986¹⁶ which must include a note of the transmission of documents to the Court of Session and to the High Court in Northern Ireland, a note of the particulars of the application to register a

custody order, including the name and address of the applicant and of the child, and a note of any order varying or revoking a registered custody order¹⁷.

The records so kept constitute the books of the court¹⁸. Any entry in a book or other document so required to be kept for these purposes, or a copy of any such entry or document purporting to be signed and certified as a true copy by the district judge, is at all times without further proof to be admitted in any court or place whatsoever as evidence of the entry and of the proceeding referred to by it and of the regularity of that proceeding¹⁹. Separate provision is made for a register of county court judgments and orders to be kept; the keeper of this register may be a corporate body under contract to the Lord Chancellor²⁰.

1 As to district judges see PARA 728 ante.

2 As to the Civil Procedure Rules ('CPR') see PARA 575 ante. As to other court officers see PARA 732 post. The specific duties of district judges, other than those set out in the text and notes 3-20 infra, are discussed as appropriate in CIVIL PROCEDURE and the other relevant titles of this work. It was held under a repealed statute that the district judge is not liable for his non-compliance with the rules of practice unless an obligation can be specifically proved to arise under the words of the particular statutes and rules laying down those rules of practice: *Robinson v Gell* (1852) 12 CB 191. As to the power of other court officers to perform acts of a formal or administrative character see CPR 2.5(1); and PARA 732 post.

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 County Courts Act 1984 s 12(1) (s 12 amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 42). The Lord Chancellor prescribes such records by regulations made by statutory instrument: County Courts Act 1984 s 12(1) (as so amended). At the date at which this title states the law, no such regulations had been made, but, by virtue of the Interpretation Act 1978 s 17(2)(b), the County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194 (as amended and modified) have effect as if so made.

5 As to judgment in default see CIVIL PROCEDURE vol 11 (2009) PARA 506 et seq.

6 As to the transfer of proceedings see CIVIL PROCEDURE vol 11 (2009) PARA 66 et seq.

7 County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194, regs 2, 3, Schedule items 1-3.

8 As to judgment summonses see CIVIL PROCEDURE vol 12 (2009) PARA 1516 et seq.

9 County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194, Schedule item 5(a), (c).

10 As to interpleader proceedings in county courts see CIVIL PROCEDURE vol 12 (2009) PARA 1628 et seq.

11 County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194, Schedule item 5(b), (c).

12 See generally CIVIL PROCEDURE vol 12 (2009) PARAS 1283 et seq, 1518 et seq; CONTEMPT OF COURT.

13 County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194, Schedule item 6.

14 See note 12 supra.

15 County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194, Schedule item 7.

16 Ie the Family Law Act 1986 Pt I (ss 1-43) (as amended); see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 830 et seq.

17 County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194, Schedule item 8 (added by SI 1988/488).

18 County Courts (Records of Proceedings) Regulations 1967, SI 1967/1194, reg 2.

19 County Courts Act 1984 s 12(2) (as amended: see note 4 supra).

20 See *ibid* s 73 (as amended), s 73A (as added); and CIVIL PROCEDURE.

UPDATE**701-746 County Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

729 Administrative and executive duties of district judges

TEXT AND NOTES 1-4--The Lord Chancellor's function under the 1984 Act s 12(1) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

The Lord Chancellor must consult the Lord Chief Justice before making regulations under the County Courts Act 1984 s 12; and the Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4)) (see PARA 516A.1) to exercise his functions under the County Courts Act 1984 s 12: s 12(3), (4) (added by Constitutional Reform Act 2005 Sch 4 para 165).

TEXT AND NOTE 20--Repealed: Courts Act 2003 Sch 8 para 272, Sch 10. See now s 98; and CIVIL PROCEDURE vol 12 (2009) PARA 1147.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(ii) District Judges/730. Judicial functions of district judges.

730. Judicial functions of district judges.

Where the Civil Procedure Rules ('CPR')¹ provide for the court to perform any act then, except where an enactment, rule or practice direction provides otherwise, that act may be performed in relation to proceedings in a county court by any judge or district judge².

The CPR set out, by supplementary practice direction, the matters over which district judges and deputy district judges in the county courts do not have jurisdiction or which they may deal with only on certain conditions³. These provisions are discussed in detail elsewhere in this work⁴. In particular, a district judge has no jurisdiction under the CPR to make an order committing a person to prison except where an enactment authorises this⁵. He has limited jurisdiction to make pre-trial orders and grant interim remedies⁶ and no jurisdiction to hear certain appeals⁷ under the homelessness legislation⁸ or to try a case in a claim made in respect of a judicial act under the Human Rights Act 1998⁹ or in which an allegation of unlawful indirect racial discrimination is made against a public authority¹⁰.

Cases allocated to the small claims track¹¹ are generally heard by a district judge¹² and a district judge also has jurisdiction to hear:

- 297 (1) any claim which has been allocated to the fast track¹³ or which is treated as being allocated to the multi-track¹⁴ under the provisions relating to Part 8 proceedings under the CPR (though this is subject to exceptions)¹⁵;

- 298 (2) proceedings for the recovery of land¹⁶;
- 299 (3) the assessment of damages or other sum due to a party under a judgment without any financial limit¹⁷; and
- 300 (4) any other proceedings if the parties consent and the designated civil judge¹⁸ gives permission¹⁹.

Wherever a district judge has jurisdiction, he may refer the matter to a circuit judge²⁰ instead of dealing with it himself²¹.

1 As to the Civil Procedure Rules see PARA 575 ante.

2 CPR 2.4(b). As to county court judges see PARA 724 ante; and as to district judges see PARA 728 ante.

3 See *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B, which does not affect jurisdiction conferred by other enactments: see PARA 1.1.

4 See CIVIL PROCEDURE vol 11 (2009) PARA 62.

5 *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 8.3. As to such enactments see (1) the Attachment of Earnings Act 1971 s 23 (as amended); and CIVIL PROCEDURE vol 12 (2009) PARAS 1465-1466, 1514; (2) the County Courts Act 1984 s 14 (as amended); and PARA 740 post; s 118 (as amended); and CONTEMPT OF COURT vol 9(1) (Reissue) PARA 454; (3) the Housing Act 1996 ss 152-157 (breach of anti-social behaviour injunction); and HOUSING vol 22 (2006 Reissue) PARA 268 et seq; (4) the Protection from Harassment Act 1997 s 3; and TORT vol 45(2) (Reissue) PARA 457; and (5) the relevant rules: see *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 8.3.

6 See CIVIL PROCEDURE vol 11 (2009) PARA 62 the text and notes 2-15.

7 le appeals on a point of law under the Housing Act 1996 s 204: see HOUSING vol 22 (2006 Reissue) PARA 295.

8 See *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 9.

9 As to such claims see PARA 316 ante.

10 See *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B paras 15, 16.

11 As to the small claims track see CIVIL PROCEDURE vol 11 (2009) PARAS 267, 274 et seq.

12 See *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B paras 11.1(a), 11.2.

13 As to the fast track see CIVIL PROCEDURE vol 11 (2009) PARAS 268, 286 et seq.

14 le treated as allocated to the multi-track under CPR 8.9(c) (see PARA CIVIL PROCEDURE vol 11 (2009) PARA 136) and *Practice Direction--Part 8* PD 8B, para B.1, Table 2 (see CIVIL PROCEDURE vol 11 (2009) PARA 127): *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 11.1(a).

15 The exceptions relate to certain applications under the Landlord and Tenant Acts 1927 and 1954 and to proceedings under the Landlord and Tenant Act 1987, the Agricultural Holdings Act 1986, the Legitimacy Act 1976, the Fair Trading Act 1973, the Local Government and Finance Act 1982 and the Mental Health Act 1983: see *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 11.1(a)(i)-(vii).

16 *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 11.1(b).

17 *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 11.1(c); but see *Sandry v Jones* (2000) Times, 3 August, CA.

18 As to designated civil judges see PARA 504 note 12 ante.

19 *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 11.1(d).

20 As to circuit judges see PARAS 522-525 ante.

21 *Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 1.2.

UPDATE**701-746 County Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

730 Judicial functions of district judges

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 8--*Practice Direction--Allocation of Cases to Levels of Judiciary* PD 2B para 9 amended.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(ii) District Judges/731. District judge's responsibility similar to sheriff's responsibility.

731. District judge's responsibility similar to sheriff's responsibility.

Every district judge¹ is responsible for the acts and defaults of himself and of the bailiffs² appointed to assist him in like manner as the sheriff of any county in England and Wales is responsible for the acts and defaults of himself and his officers³. He is also liable to the same extent for the wrongful acts of a person employed by one of his bailiffs to whom a warrant has been delivered for execution⁴. He is responsible if process is served or executed upon the wrong person, provided that person did not contribute to the mistake⁵; but if a person sued in a wrong name does not take objection when served with any process he is presumed to acquiesce⁶.

1 As to district judges see PARA 728 et seq ante.

2 As to the general responsibilities of county court bailiffs see further PARA 734 et seq post; and CIVIL PROCEDURE vol 12 (2009) PARAS 1258 et seq, 1340. Note, however, that in the County Courts Act 1984 'bailiff', unless (as in this paragraph) the context otherwise requires, includes a district judge: s 147(1) (definition amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)).

3 County Courts Act 1984 s 123 (amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)). See also *Smith v Pritchard* (1849) 8 CB 565. As to claims against the district judge in respect of the sale of goods under an execution see SHERIFFS. As to interpleader by the district judge see CIVIL PROCEDURE vol 12 (2009) PARA 1628 et seq.

4 *Burton v Le Gros* (1864) 34 LJQB 91.

5 *Walley v M'Connell* (1849) 13 QB 903; *Dunston v Paterson* (1857) 2 CBNS 495.

6 *Fisher v Magnay* (1843) 5 Man & G 778. Where a judgment debt was paid to the plaintiff and not into court, the officers were held not responsible for executing a warrant in ignorance of this fact: *Davies v Fletcher* (1853) 2 E & B 271.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iii) Other Officers and Staff/732. In general.

(iii) Other Officers and Staff

732. In general.

Under the Courts Act 1971 the Lord Chancellor¹ may, with the concurrence of the Treasury as to numbers and salaries, appoint officers and other staff for the county courts². He also has powers to contract out the provision of administrative officers and staff³. These powers, and the provision made under them, have already been discussed⁴.

Administrative support to the county courts is provided by the Court Service, which is an executive agency of the Lord Chancellor's Department⁵.

Where the Civil Procedure Rules ('CPR')⁶ require or permit a county court to perform an act of a formal or administrative character, that act may be performed by a court officer⁷. However, a requirement that a court officer carry out any act at the request of a party is subject to the payment of any fee required by a fees order for the carrying out of that act⁸.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 See the Courts Act 1971 s 27(1) (as substituted); and PARA 514 ante.

3 See *ibid* s 27(4) (as substituted); and PARA 514 ante.

4 See PARA 514 ante.

5 See PARA 502 ante.

6 As to the CPR see PARA 575 ante.

7 CPR 2.5(1). 'Court officer' means a member of the court staff: CPR 2.3(1). For the meaning of 'officer' for the purposes of the County Courts Act 1984 see PARA 726 ante.

8 CPR 2.5(2). As to county court fees orders see PARA 705 ante; and CIVIL PROCEDURE vol 11 (2009) PARA 87.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iii) Other Officers and Staff/733. Appointment of brokers and appraisers.

733. Appointment of brokers and appraisers.

The district judge¹ may from time to time as he thinks fit appoint such number of persons for keeping possession, and such number of brokers and appraisers for the purpose of selling or valuing any goods seized in execution² under process of the court, as appears to him to be necessary³. He may direct security to be taken from any broker, appraiser or other person so appointed for such sum and in such manner as he thinks fit for the faithful performance of his duties without injury or oppression⁴; and may dismiss any broker, appraiser or other person so appointed⁵.

Prescribed fees⁶ are payable out of the produce of goods distrained or sold to brokers and appraisers so appointed in respect of their duties⁷.

The judge⁸ may appoint in writing any bailiff⁹ of the court to act as a broker or appraiser for the purpose of selling or valuing any goods seized in execution under process of the court¹⁰ and a bailiff so appointed may, without other licence in that behalf, perform all the duties which brokers or appraisers appointed as described above may perform under the County Courts Act 1984¹¹.

1 As to district judges see PARA 728 et seq ante.

2 As to goods which may be seized in execution see the County Courts Act 1984 s 89 (as amended); and CIVIL PROCEDURE vol 12 (2009) PARA 1315. No goods seized in execution under process of a county court may be sold for the purpose of satisfying the warrant of execution except by one of the brokers or appraisers appointed under Pt V (ss 85-111) (as amended): s 94. Sales must normally be by public auction: see s 97. See further CIVIL PROCEDURE vol 12 (2009) PARA 1336 et seq.

3 Ibid s 95(1) (s 95(1)-(3) amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)).

4 County Courts Act 1984 s 95(2) (as amended: see note 3 supra).

5 Ibid s 95(3) (as amended: see note 3 supra).

6 The fees prescribed by the fees orders: ibid s 95(4). As to fees orders see PARA 705 ante.

7 Ibid s 95(4).

8 For the meaning of 'the judge' see PARA 724 the text to note 11 ante.

9 For the meaning of 'bailiff' see PARA 731 note 2 ante.

10 County Courts Act 1984 s 96(1).

11 Ibid s 96(2).

UPDATE**701-746 County Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

733 Appointment of brokers and appraisers

NOTE 6--Fees now prescribed by an order under the Courts Act 2003 s 92: 1984 Act s 95(4) (amended by Courts Act 2003 Sch 8 para 271(c)).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/734. Officers not to act as legal representatives.

(iv) Liabilities and Protection of Officers**734. Officers not to act as legal representatives.**

Subject to what follows, no officer¹ of a county court may, either by himself or his partner, be directly or indirectly engaged as legal representative² or agent for any party in any proceedings in that court³. Every person who contravenes this prohibition is liable for each offence on summary conviction to a fine of an amount not exceeding level 3 on the standard scale⁴.

This prohibition does not, however, apply to a person acting as district judge in another district⁵ nor to a deputy district judge⁶; but a deputy district judge must not act as such in relation to any proceedings in which he is, either by himself or his partner, directly or indirectly engaged as legal representative or agent for any party⁷.

¹ For the meaning of 'officer' see PARA 732 ante.

² For the meaning of 'legal representative' see PARA 710 note 11 ante.

³ County Courts Act 1984 s 13(1) (s 13(1), (4) amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 49(2)).

⁴ Ibid s 13(2). The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this title states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

⁵ ie acting as district judge by virtue of the County Courts Act 1984 s 6(5) (as amended): see PARA 728 ante.

6 See *ibid* s 13(3), (4) (as amended): see note 1 *supra*; also amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)).

7 County Courts Act 1984 s 13(4) (as amended: see notes 1, 6 *supra*).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/735. Liability for neglect to levy execution.

735. Liability for neglect to levy execution.

Where a county court bailiff¹ employed to levy any execution against goods loses, by neglect, connivance or omission, the opportunity of levying the execution, any party aggrieved² thereby may complain to the judge³ of that court⁴. On any such complaint the judge, if the neglect, connivance or omission is proved to his satisfaction, must order the bailiff to pay the damages sustained by the complainant, not exceeding in any case the sum for which the execution issued⁵. This provision does not exempt a district judge, where he neglects to levy execution, from liability to a claim for damages at common law in the same manner as a sheriff is liable⁶.

1 'Bailiff' includes a district judge: see PARA 731 note 2 *ante*.

2 For the meaning of 'party aggrieved' see generally JUDICIAL REVIEW vol 61 (2010) PARA 664.

3 For the meaning of 'judge' see PARA 724 the text to note 11 *ante*.

4 County Courts Act 1984 s 124(1). It has been held that the judge of one court cannot order the bailiff of another court to pay compensation for neglect to levy execution in pursuance of a warrant of the first court: *R v Shropshire County Court Judge* (1887) 20 QBD 242 (decided under earlier legislation). As to levying execution see generally CIVIL PROCEDURE vol 12 (2009) PARA 1310 *et seq*.

5 County Courts Act 1984 s 124(2).

6 *Watson v White* [1896] 2 QB 9; *Domine v Grimsdall* [1937] 2 All ER 119 (where the damages were held to include the costs of an effective hearing before the county court judge to test the validity of the bailiff's acts, but not the costs of a previous hearing rendered abortive by a successful appeal to the Court of Appeal or the costs of that appeal). In an action for wrongful execution on goods the owner need only show that the warrant did not authorise the officer to levy execution to the value of the goods actually seized: *Moore v Lambeth County Court Registrar (No 2)* [1970] 1 QB 560, [1970] 1 All ER 980, CA. All the cases cited in this note were decided under earlier legislation. As to the district judge's responsibility being similar to that of a sheriff see PARA 731 *ante*.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/736. Liability for false certificate of service.

736. Liability for false certificate of service.

Service by a county court officer¹ of any summons or other process issued from a county court may be proved by a certificate in the prescribed form showing the fact and mode of the service². Any officer of a court wilfully and corruptly giving a false certificate in respect of the service of a summons or other process is guilty of an offence and liable on conviction on indictment to imprisonment for any term not exceeding two years or on summary conviction to imprisonment for any term not exceeding six months or a fine not exceeding the statutory maximum, or to both³. He must be removed from office on conviction of any such offence⁴.

1 For the meaning of 'officer' see PARA 726 ante.

2 County Courts Act 1984 s 133(1) (amended by the Civil Procedure (Modification of Enactments) Order 1998, SI 1998/2940, art 6(e)). As to the prescribed certificate of service see CIVIL PROCEDURE vol 11 (2009) PARA 154.

3 County Courts Act 1984 s 133(2). 'The statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and the 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 140-141.

4 County Courts Act 1984 s 133(2).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/737. Protection against irregularity in executing warrant.

737. Protection against irregularity in executing warrant.

No county court officer¹ in executing a court warrant, and no person at whose instance any such warrant is executed, is to be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which the warrant depends, or in the form of the warrant, or in the mode of executing it². Any person aggrieved³ may bring a claim for any special damage sustained by him by reason of the irregularity or informality against the person guilty of it⁴ but, unless the damages awarded exceed £2, can recover no costs⁵.

1 For the meaning of 'officer' see PARA 726 ante.

2 County Courts Act 1984 s 125(1).

3 For the meaning of 'person aggrieved' see generally JUDICIAL REVIEW vol 61 (2010) PARA 664.

4 As to the general law of trespass applying to bailiffs see SHERIFFS.

5 County Courts Act 1984 s 125(1), (2).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/738. Warrants as evidence of authority.

738. Warrants as evidence of authority.

In any claim commenced against a person for anything done in pursuance of the County Courts Act 1984, the production of the county court warrant is to be deemed sufficient proof of the authority of the court previous to the issue of the warrant¹. It has been held, under earlier legislation, that this provision protects not only the district judge² and officers of the court³, but also any other person who acts under a warrant of the court⁴.

1 County Courts Act 1984 s 127.

2 As to the district judge see PARA 728 et seq ante.

3 As to court officers see PARAS 726, 732 ante.

4 See *Aspey v Jones* (1884) 54 LJQB 98.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/739. Procedure in claims against bailiffs acting under warrants.

739. Procedure in claims against bailiffs acting under warrants.

No claim may be commenced against any bailiff¹ for anything done in obedience to a warrant issued by the district judge² unless (1) a demand for inspection of the warrant and for a copy of it is made or left at the office of the bailiff by the party intending to bring the claim, or his legal representative³ or agent; and (2) the bailiff refuses or neglects to comply with the demand within six days after it is made⁴. The demand must be in writing and signed by the person making it⁵.

If a claim is commenced against a bailiff in a case where such a demand has been made and not complied with, judgment must be given for the bailiff if the warrant is produced or proved at the trial, notwithstanding any defect of jurisdiction or other irregularity in the warrant; but the district judge who issued the warrant may be joined as a defendant in the claim⁶. If the district judge is so joined and judgment is given against him, the costs to be recovered by the claimant against the district judge include such costs as the claimant is liable to pay to the bailiff⁷.

1 For these purposes, (except in head (1) in the text), 'bailiff' includes any person acting by the order and in aid of a bailiff: County Courts Act 1984 s 126(4). In the County Courts Act 1984 generally, 'bailiff' includes district judge: see PARA 731 note 2 ante. See also *Dews v Ryley* (1851) 20 LJCP 264, distinguishing *Andrews v Marris* (1841) 1 QB 3 (both decided under earlier legislation).

2 As to district judges see PARA 728 et seq ante. It was held under earlier legislation that a motion by a trustee in bankruptcy against a registrar (now known as a district judge: see PARA 728 ante) for an order on him to deliver up property was not an 'action' (now known as a 'claim': see CIVIL PROCEDURE vol 11 (2009) PARA 18) for these purposes: *Re Lock, ex p Poppleton* (1890) 39 WR 15.

3 For the meaning of 'legal representative' see PARA 710 note 11 ante.

4 County Courts Act 1984 s 126(1) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 49(2); and by virtue of s 74(1), (3)).

5 County Courts Act 1984 s 126(2).

6 Ibid s 126(3) (amended by virtue of the Courts and Legal Services Act 1990 s 74(1), (3)).

7 County Courts Act 1984 s 126(3) (as amended: see note 6 supra). For an analogous case of protection of constables acting under a magistrates' warrant see *Atkins v Kilby* (1840) 11 Ad & El 777. A defendant was formerly obliged to give notice of his intention to rely on the defence afforded by this provision (*Denny v Bennett* (1896) 44 WR 333), and although this obligation has now gone, it is still desirable that he should do so.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/740. Penalty for assaulting officers.

740. Penalty for assaulting officers.

Any person assaulting an officer¹ of a county court in the execution of his duty² is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or to both³, or, alternatively, may be committed to prison by the judge⁴ for contempt of court⁵ or fined by the judge, or both⁶. A bailiff⁷ of the court may take the offender into custody with or without a warrant and bring him before the judge⁸. It has been held under earlier legislation that the bailiff's power to arrest the offender is given to him as an individual officer and that a wrongful exercise of it does not render the district judge liable⁹.

The proceedings taken for assault do not prevent a civil claim being brought in respect of the same incident¹⁰, nor does the existence of the special remedy prevent the indictment¹¹ or summary conviction¹² of the offender for common assault.

The judge may at any time revoke an order committing a person to prison under these provisions and, if he is already in custody, may order his discharge¹³.

Before imposing any penalty under this jurisdiction, the judge must give the alleged offender the opportunity to obtain legal advice and representation and allow time for him to contest the allegations if he does not admit them and put forward any mitigation¹⁴.

1 For the meaning of 'officer' see PARA 726 ante.

2 A bailiff in possession of goods under a warrant who leaves temporarily to obtain refreshment and is assaulted on his return is 'in the execution of his duty' within these provisions: *Coffin v Dyke* (1884) 48 JP 757. He is acting in the course of his duty if he enters another person's house when the debtor is in there at the time (*Southam v Smout* [1964] 1 QB 308, [1963] 3 All ER 104, CA), but not if he forces his way into a house (*Vaughan v McKenzie* [1969] 1 QB 557, [1968] 1 All ER 1154, DC; following *Broughton v Wilkerson* (1880) 44 JP 781, DC; *Rossiter v Conway* (1893) 58 JP 350). All the cases cited in this note were decided under earlier legislation.

3 County Courts Act 1984 s 14(1)(a). As to the standard scale see PARA 734 note 4 ante.

4 A district judge or deputy district judge has the same powers under *ibid* s 14 (as amended) as a judge: s 14(3) (added by the Courts and Legal Services Act 1990 s 74(4)). For the meaning of 'the judge' see PARA 724 the text to note 11 ante. As to district judges and deputy district judges see PARA 728 ante.

5 See further CONTEMPT OF COURT vol 9(1) (Reissue) PARA 454.

6 County Courts Act 1984 s 14(1)(b) (amended by the Statute Law (Repeals) Act 1986).

7 For the meaning of 'bailiff' see PARA 731 note 2 ante.

8 County Courts Act 1984 s 14(2).

9 *Smith v Pritchard* (1849) 8 CB 565. See also *R v Briggs* (1883) 47 JP 615; *R v Holsworthy Justices, ex p Edwards* [1952] 1 All ER 411, DC.

10 *Box v Green* (1854) 9 Exch 503.

11 *R v Davies* (1861) 8 Cox CC 486.

12 *R v Briggs* (1883) 47 JP 615 (proceedings not barred under the Offences against the Person Act 1861 s 42 (now repealed)).

13 County Courts Act 1984 s 14(2).

14 *Read v King* (18 November 1996, unreported), CA. This decision is now fortified by the Human Rights Act 1998 s 1(3), Sch 1 art 6 (right to a fair and public hearing: see PARA 312 ante).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(5) COURT OFFICERS/(iv) Liabilities and Protection of Officers/741. Penalty for rescuing goods seized in execution.

741. Penalty for rescuing goods seized in execution.

If any person rescues or attempts to rescue any goods seized in execution¹ under process of a county court, he is liable on summary conviction to imprisonment for a term not exceeding one month or a fine of an amount not exceeding level 4 on the standard scale, or to both², or, alternatively, may be committed to prison by the judge³ for contempt of court⁴ for a specified period not exceeding one month or fined by the judge an amount not exceeding level 4 on the standard scale, or both⁵. A bailiff⁶ of the court may take the offender into custody with or without a warrant and bring him before the judge⁷.

The judge may at any time revoke an order committing a person to prison under these provisions and, if he is already in custody, order his discharge⁸.

Before imposing any penalty under this jurisdiction, the judge must give the alleged offender the opportunity to obtain legal advice and representation and allow time for him to contest the allegations if he does not admit them and put forward any mitigation⁹.

1 As to goods which may be seized in execution see the County Courts Act 1984 s 89 (as amended); and CIVIL PROCEDURE VOL 12 (2009) PARA 1315.

2 Ibid s 92(1)(a). As to the standard scale see PARA 734 note 4 ante.

- 3 For the meaning of 'the judge' see PARA 724 the text to note 11 ante.
- 4 See generally CONTEMPT OF COURT.
- 5 County Courts Act 1984 s 92(1)(b) (amended by the Statute Law (Repeals) Act 1986).
- 6 For the meaning of 'bailiff' see PARA 731 note 2 ante.
- 7 County Courts Act 1984 s 92(1); and see PARA 740 the text and note 9 ante.
- 8 Ibid s 92(2).
- 9 *Read v King* (18 November 1996, unreported), CA (a decision on the County Courts Act 1984 s 14: see PARA 740 ante). This decision is now fortified by the Human Rights Act 1998 s 1(3), Sch 1 art 6 (right to a fair and public hearing: see PARA 312 ante).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(6) COURT BUILDINGS, OFFICES AND SEAL/742. County court buildings; in general.

(6) COURT BUILDINGS, OFFICES AND SEAL

742. County court buildings; in general.

The use of public buildings for holding county courts¹ and the provision of court buildings and accommodation by the Secretary of State² have already been discussed.

Certain court centres are combined Crown Court Centres and county courts³.

- 1 See the County Courts Act 1984 s 4; and PARA 512 ante.
- 2 See the Courts Act 1971 s 28 (as amended); and PARA 513 ante.
- 3 See PARA 511 note 5 ante.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they

occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(6) COURT BUILDINGS, OFFICES AND SEAL/743. Necessity for court office.

743. Necessity for court office.

Every county court must have an office or, if the Lord Chancellor¹ directs, two or more offices for the transaction of business in relation to proceedings in the court². Each office is to be situated at such place as the Lord Chancellor directs³.

The times when the office or offices must be open have already been discussed⁴.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 *Practice Direction--Court Offices* PD 2A para 3.1.

3 *Practice Direction--Court Offices* PD 2A para 3.1. As to the locations of county courts see PARA 707 ante.

4 See PARA 509 ante.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(6) COURT BUILDINGS, OFFICES AND SEAL/744. Incidental expenses.

744. Incidental expenses.

The expenses of supplying the courts and offices with law and office books, stationery and postage stamps, the expenses of conveying persons committed to prison by the courts and all other expenses arising out of the jurisdiction for the time being conferred on county courts or on any county court officer are paid out of money provided by Parliament¹.

1 County Courts Act 1984 s 132(b)-(d).

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(6) COURT BUILDINGS, OFFICES AND SEAL/745. Use of seal.

745. Use of seal.

Every county court is a court of record¹ and must have a seal², which is a mark put on a document to indicate that it has been issued by the court³. The seal may be placed on the document either by hand or by printing a facsimile of it on the document⁴.

Forgery of the court seal is a criminal offence⁵.

¹ As to courts of record see PARA 308 ante.

² County Courts Act 1984 s 1(2).

³ CPR 2.2, Glossary.

⁴ See CPR 2.6(2). As to the sealing of court documents see further CIVIL PROCEDURE vol 11 (2009) PARA 81.

⁵ See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 346 et seq.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/6. COUNTY COURTS/(6) COURT BUILDINGS, OFFICES AND SEAL/746-800. False representation of court's authority.

746-800. False representation of court's authority.

Any person who (1) delivers or causes to be delivered to any other person any paper falsely purporting to be a copy of any summons or other process of a county court, knowing it to be

false; or (2) acts or professes to act under any false colour or pretence of the process or authority of a county court, is guilty of an offence and liable on conviction on indictment for each offence to imprisonment for a term not exceeding seven years¹.

Without prejudice to the above provision, it is not lawful to deliver or cause to be delivered to any person any document which was not issued under the authority of a county court but which, by reason of its form or contents or both, has the appearance of having been issued under such authority². If any person contravenes this provision he is liable on summary conviction for each offence to a fine of an amount not exceeding level 3 on the standard scale³.

1 County Courts Act 1984 s 135.

2 Ibid s 136(1), (3).

3 Ibid s 136(2). As to the standard scale see PARA 734 note 4 ante.

UPDATE

701-746 County Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(1) THE COURTS-MARTIAL APPEAL COURT/801. Right of appeal.

7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION

(1) THE COURTS-MARTIAL APPEAL COURT

801. Right of appeal.

The Courts-Martial Appeal Court is a superior court of record¹ established by statute² for the purpose of hearing appeals from naval, army and air force courts-martial³.

A person convicted by court-martial⁴ may, with the leave of the Courts-Martial Appeal Court, appeal to that court against his conviction⁵ and against any sentence (not being a sentence fixed by law) passed on him for the offence for which he was convicted⁶. A parent or guardian subject to service jurisdiction may also appeal, with leave, against a fine imposed on him or a compensation order made against him⁷. The right of appeal is normally subject to a person's having first presented a petition to the Defence Council and his case having been subject to administrative review⁸. In addition to the provision for appeal by a convicted person, the Judge Advocate of the Fleet⁹, the Judge Advocate General¹⁰ or the Secretary of State¹¹ may in certain circumstances refer the finding of a court-martial to the Courts-Martial Appeal Court¹² and the Secretary of State may refer the sentence passed on any person convicted by a court-martial to the Courts-Martial Appeal Court¹³.

The decision of the court is normally final¹⁴, but an appeal lies, with leave¹⁵, to the House of Lords at the instance of the accused or the Defence Council from any decision of the court, whether the court was sitting within or outside the United Kingdom¹⁶. Leave to appeal may not be granted unless the court certifies that a point of law of general public importance is involved, and it appears to the court or the House of Lords, as the case may be, that the point is one which ought to be considered by the House¹⁷.

1 Courts-Martial (Appeals) Act 1968 s 1(2). As to courts of record see PARA 308 ante; and as to superior courts see PARA 309 ante.

2 The Courts-Martial Appeal Court was established by the Courts-Martial (Appeals) Act 1951 Pt I (ss 1-27) (repealed) and is continued in being by the Courts-Martial (Appeals) Act 1968 s 1(1).

3 Ibid s 1(1). See generally ARMED FORCES.

4 'Court-martial' means a naval, army or air force court-martial, ie a court-martial under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955: Courts-Martial (Appeals) Act 1968 s 57(1) (amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 1). As to courts-martial see ARMED FORCES.

5 Courts-Martial (Appeals) Act 1968 s 8(1)(a) (s 8(1) amended by the Armed Forces Act 1971 s 73(2); and by the Armed Forces Act 1996 s 17(2)(a)). There is a similar right of appeal against a finding by court-martial of insanity or unfitness to stand trial: see the Courts-Martial (Appeals) Act 1968 ss 21(1), 24(1) (both as amended); and ARMED FORCES. For the application of the Act to prisoner of war courts-martial see s 56, Sch 3 (as amended); and ARMED FORCES; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 442.

6 Ibid s 8(1)(b) (as amended: see note 5 supra).

7 See ibid s 8(1A) (as added and amended); and ARMED FORCES.

8 See ibid s 8(2), (3) (substituted by the Armed Forces Act 2001 s 34, Sch 6 Pt 6 para 55(1), (3) as from a date to be appointed under s 39(2)); and ARMED FORCES. However, the European Court of Human Rights has recently held that the system of administrative review is in breach of the requirement of the European Convention on Human Rights art 6(1) (now incorporated into domestic law: see the Human Rights Act 1998 s 1(3), Schedule, art 6(1)) that a criminal court be established by law and the requirements of independence and impartiality: see *Morris v United Kingdom* [2002] ECHR 38784/97, ECtHR.

9 As to the Judge Advocate of the Fleet see ARMED FORCES.

10 As to the Judge Advocate General see ARMED FORCES.

11 Ie the Secretary of State for Defence: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 439 et seq.

12 See the Courts-Martial (Appeals) Act 1968 s 34(1)-(3) (as amended); and ARMED FORCES.

13 See ibid s 34(4), (5) (substituted by the Armed Forces Act 1996 s 17(4); and ARMED FORCES.

14 Courts-Martial (Appeals) Act 1968 s 1(4).

15 Ie of that court or of the House of Lords: ibid s 39(2).

16 Ibid s 39(1); and see PARA 362 ante.

17 Ibid s 39(2); and see PARA 362 ante.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they

occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

801-804 The [Court Martial] Appeal Court

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

801 Right of appeal

TEXT AND NOTES 1-3--Courts-Martial (Appeals) Act 1968 s 1(1) amended: Armed Forces Act 2006 Sch 8 para 3.

TEXT AND NOTES 4-8--Courts-Martial (Appeals) Act 1968 s 8(1) amended, s 8(1A)-(3) repealed: Armed Forces Act 2006 Sch 8 para 7.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(1) THE COURTS-MARTIAL APPEAL COURT/802.
Constitution of the Courts-Martial Appeal Court.

802. Constitution of the Courts-Martial Appeal Court.

The Courts-Martial Appeal Court consists of the ex-officio and ordinary judges of the Court of Appeal¹, such of the judges of the High Court² as the Lord Chief Justice³ may from time to time nominate for the purpose⁴, such of the Lords Commissioners of Justiciary in Scotland as the Lord Justice General may nominate, such judges of the Supreme Court of Northern Ireland as the Lord Chief Justice of Northern Ireland may nominate, and such other persons of legal experience as the Lord Chancellor⁵ may appoint⁶.

The court is summoned in accordance with directions given by the Lord Chief Justice⁷, with the consent of the Lord Chancellor⁸, and is duly constituted if it consists of an uneven number of judges, at least three in number⁹, one of whom at least is a member of the court by virtue of his being an ex-officio or ordinary judge of the Court of Appeal, a judge of the High Court, a Lord Commissioner of Justiciary or a judge of the Supreme Court of Northern Ireland¹⁰. Subject to this requirement¹¹, the court is, however, duly constituted if it consists of two judges for all purposes except (1) determining an appeal against conviction or a finding of not guilty by reason of insanity or a finding of unfitness to stand trial; (2) determining an application for leave to appeal to the House of Lords; and (3) refusing an application for leave to appeal to the Courts-Martial Appeal Court against conviction or any such finding as is mentioned in head (1) above, other than an application which has been refused by a single judge¹². Further, where part of any proceedings before the court has been heard by an uneven number of judges greater than three and one or more members of the court as constituted for the purpose of those proceedings are unable to continue, then the court remains duly constituted¹³ for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than three¹⁴. Where an appeal has been heard by the court and the court as constituted for that purpose consists of an even number of judges, then if those judges are equally divided, the case must be re-argued before and determined by an uneven number of judges not less than three¹⁵.

Under the directions of the Lord Chief Justice the court may sit in two or more divisions¹⁶, and at any place within or outside the United Kingdom¹⁷.

- 1 As to the ex-officio and ordinary judges of the Court of Appeal see PARAS 515, 637 ante.
- 2 As to High Court judges see PARAS 515, 602, 619 ante.
- 3 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.
- 4 The Master of the Rolls may nominate such judges if at any time the Lord Chief Justice cannot do so or his office is vacant: Courts-Martial (Appeals) Act 1968 s 6. As to the Master of the Rolls see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.
- 5 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 6 Courts-Martial (Appeals) Act 1968 s 2(1), (2) (s 2(1) amended by the Supreme Court Act 1981 ss 145(2), 152(4), Sch 7). The terms of office and conditions of appointment of persons in the last-mentioned class are determined by the Lord Chancellor in consultation with the Treasury: Courts-Martial (Appeals) Act 1968 s 2(2) (a). There may be paid to such persons such remuneration and to all judges of the court such travelling and subsistence allowances as the Lord Chancellor may, with the approval of the Treasury, determine: s 2(3). Judges of the Courts-Martial Appeal Court are disqualified for membership of the House of Commons: House of Commons Disqualification Act 1975 s 1, Sch 1 Pt I.
- 7 In the event of the office of Lord Chief Justice being vacant or the Lord Chief Justice being unable to act, the Master of the Rolls may give directions: Courts-Martial (Appeals) Act 1968 s 6.
- 8 Ibid s 4(1).
- 9 Ibid s 5(1) (s 5 substituted by the Supreme Court Act 1981 s 145(4)).
- 10 Courts-Martial (Appeals) Act 1968 s 5(4) (as substituted: see note 9 supra). The qualification as to the one particular judge may be dispensed with by direction of the Lord Chancellor when the court is sitting at any place outside the United Kingdom: s 5(4) (as so substituted).
- 11 Ie subject to ibid s 5(4) (as substituted: see note 9 supra): see the text and note 10 supra.
- 12 Ibid s 5(3) (as substituted: see note 9 supra). For matters in which a single judge may act see s 36 (as amended); and ARMED FORCES.
- 13 See note 11 supra.
- 14 Courts-Martial (Appeals) Act 1968 s 5(2) (as substituted: see note 9 supra).
- 15 Ibid s 5(5) (as substituted: see note 9 supra). The constitution of the court is broadly similar to that of the Criminal Division of the Court of Appeal; as to that Division see PARA 636 ante.
- 16 Ibid s 4(2).
- 17 Ibid s 4(3).

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

801-804 The [Court Martial] Appeal Court

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

802 Constitution of the [Court Martial] Appeal Court

TEXT AND NOTES 6, 10--The Lord Chancellor's functions under the 1968 Act ss 2, 5 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 6--Any appointment to the office of judge of the Court Martial Appeal Court in exercise of the function under the 1968 Act s 2(2) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 2, in accordance with ss 85-93, 96: see PARA 515B.18.

NOTE 6--House of Commons Disqualification Act 1975 Sch 1 Pt I amended to refer to judges of the Court Martial Appeal Court: Armed Forces Act 2006 Sch 16 para 68.

TEXT AND NOTE 10--Courts-Martial (Appeals) Act 1968 s 5(4) amended, s 5(6) added: 2005 Act Sch 4 para 62.

TEXT AND NOTE 12--Courts-Martial (Appeals) Act 1968 s 5(3) amended: 2005 Act Sch 9 para 17(2); Armed Forces Act 2006 Sch 8 para 5.

TEXT AND NOTE 16--Courts-Martial (Appeals) Act 1968 s 4(2) repealed: Armed Forces Act 2006 Sch 8 para 4.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(1) THE COURTS-MARTIAL APPEAL COURT/803. Court's powers.

803. Court's powers.

The Courts-Martial Appeal Court has power to determine any question necessary to be determined in order to do justice in the case before the court¹ and may authorise a new trial where a conviction is quashed if it appears to the court that the interests of justice so require². It also has power, inter alia, to order the production of documents or exhibits connected with the proceedings, order the attendance of witnesses, receive fresh evidence³, obtain reports and the like from members of the court-martial or the person who acted as judge advocate⁴, order a reference of any question to a special commissioner for inquiry⁵, and appoint a person with special expert knowledge to act as an assessor⁶.

Any power under the Courts-Martial (Appeals) Act 1968 which is exercisable by a judge of the court⁷ may also be exercised by any judge of the High Court⁸, by any Lord Commissioner of Justiciary or by any judge of the Supreme Court of Northern Ireland, notwithstanding that he is not for the time being a judge of the Courts-Martial Appeal Court⁹.

The practice and procedure of the court is regulated by rules made by the Lord Chief Justice¹⁰ with the approval of the Lord Chancellor¹¹.

1 Courts-Martial (Appeals) Act 1968 s 1(2).

2 See *ibid* s 19 (as amended); and ARMED FORCES.

3 See *ibid* s 28(1) (amended by the Criminal Appeal Act 1995 s 29, Sch 2 para 5(3)(a)); and ARMED FORCES.

4 See the Courts-Martial (Appeals) Act 1968 s 29(1); and ARMED FORCES.

5 See *ibid* s 30(1); and ARMED FORCES.

6 See *ibid* s 30(2); and ARMED FORCES.

7 As to judges of the court see PARA 802 ante.

8 As to High Court judges see PARAS 515, 602, 619 ante.

9 Courts-Martial (Appeals) Act 1968 s 3 (amended by the Supreme Court Act 1981 ss 145(3), 152(4), Sch 7).

10 As to the Lord Chief Justice see PARA 515 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 303.

11 See the Courts-Martial (Appeals) Act 1968 s 49(1). Rules of court made for the purposes of any provision of the Courts-Martial (Appeals) Act 1968 may make different provision in relation to different classes of cases and may provide for any incidental or supplementary matters for which it appears to the Lord Chief Justice to be necessary or expedient for the purposes of that provision to provide: s 49(2). The power to make such rules of court is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and the Statutory Instruments Act 1946 (see STATUTES vol 44(1) (Reissue) PARA 1501 et seq) applies to a statutory instrument containing rules of court made under the Courts-Martial (Appeals) Act 1968 s 49 in like manner as if the rules had been made by a minister of the Crown: s 49(3), (4). In the exercise of this power the Lord Chief Justice has made the Courts-Martial Appeal Rules 1968, SI 1968/1071 (as amended) which came into operation on 1 September 1968: r 1. The performance of any duty imposed upon any person under the Rules may be enforced by order of the court: r 23. See further ARMED FORCES. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

801-804 The [Court Martial] Appeal Court

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

803 Court's powers

NOTE 11--Courts-Martial (Appeals) Act 1968 s 49(1), (2) amended, s 49(3), (4) repealed: Constitutional Reform Act 2005 Sch 1 para 9, Sch 18 Pt 1. SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(1) THE COURTS-MARTIAL APPEAL COURT/804. Officers of the court.

804. Officers of the court.

There is a registrar of the Courts-Martial Appeal Court who is appointed by the Lord Chancellor¹, who also appoints such other officers and servants of the court as in his opinion are necessary, with the approval of the Treasury as to numbers². Their remuneration is determined by the Lord Chancellor with the Treasury's approval and the principal civil service pension scheme³ for the time being in force applies to them, with the necessary adaptations, as it applies to other persons employed in the civil service⁴. Their remuneration, and such other expenses of the court as the Treasury may sanction, must be defrayed out of moneys provided by Parliament⁵.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Courts-Martial Appeal Act 1968 s 7(1).

3 As to this scheme see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 576 et seq.

4 Courts-Martial (Appeals) Act 1968 s 7(2) (amended by the Superannuation Act 1972 s 29(1), Sch 6 para 70).

5 Courts-Martial (Appeals) Act 1968 s 7(3).

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

801-804 The [Court Martial] Appeal Court

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

804 Officers of the court

TEXT AND NOTE 4--The Lord Chancellor's function under the 1968 Act s 7(2) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(2) ECCLESIASTICAL COURTS/805. The ecclesiastical courts; in general.

(2) ECCLESIASTICAL COURTS

805. The ecclesiastical courts; in general.

For each diocese there is a court of the bishop of the diocese¹ (to be called the consistory court of the diocese or, in the case of the court for the diocese of Canterbury, the commissary court of that diocese) which has the original jurisdiction conferred on it by the Ecclesiastical Jurisdiction Measure 1963².

For each of the provinces of Canterbury and York there is a court of the archbishop of the province³ (to be called, in the case of the court for the province of Canterbury, the Arches Court of Canterbury, and, in the case of the court for the province of York, the Chancery Court of York) which has the appellate jurisdiction conferred on it by the 1963 Measure⁴. For both of those provinces there is also a court (to be called the Court of Ecclesiastical Causes Reserved) which has the original and appellate jurisdiction conferred on it by that Measure⁵. Commissions may be appointed in each province with original jurisdiction to try bishops⁶ or archbishops⁷ for ecclesiastical offences⁸; and Her Majesty may appoint commissioners with such jurisdiction as is conferred on them by the 1963 Measure with respect to the review of findings of any such commission and also of the Court of Ecclesiastical Causes Reserved⁹.

The Judicial Committee of the Privy Council has appellate jurisdiction under the 1963 Measure¹⁰.

For each of the provinces of Canterbury and York there is also a Vicar-General's court with original jurisdiction to hear and determine, in respect of every cathedral church in the province, proceedings instituted on behalf of a bishop for an injunction or a restoration order under the legislation relating to the care of cathedrals¹¹.

1 As to Church of England bishops and dioceses see ECCLESIASTICAL LAW.

2 Ecclesiastical Jurisdiction Measure 1963 s 1(1).

3 As to Church of England archbishops and provinces see ECCLESIASTICAL LAW.

4 Ecclesiastical Jurisdiction Measure 1963 s 1(2)(a).

5 Ibid s 1(3)(b).

6 See ibid s 1(2)(b).

7 See ibid s 1(3)(a).

8 As to ecclesiastical offences see ECCLESIASTICAL LAW.

9 See the Ecclesiastical Jurisdiction Measure 1963 s 1(3)(c).

10 See ibid s 1(3)(d); and PARA 411 ante.

11 See the Care of Cathedrals (Supplementary Provisions) Measure 1994 ss 4, 5; and ECCLESIASTICAL LAW.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(2) ECCLESIASTICAL COURTS/806. Judges of ecclesiastical courts.

806. Judges of ecclesiastical courts.

The consistory court of a diocese¹ must be presided over by a single judge who is styled the chancellor of the diocese or, in the case of the diocese of Canterbury, the commissary general, and appointed by the bishop of the diocese by letters patent². Before appointing a person to be chancellor of a diocese the bishop must consult the Lord Chancellor³ and the Dean of the Arches and Auditor⁴. A person appointed to be chancellor of a diocese must be at least 30 years old and either be a person who has a seven year general qualification within the meaning of the Courts and Legal Services Act 1990⁵ or be a person who has held high judicial office⁶. Before appointing a layman, the bishop must satisfy himself that the person to be appointed is a communicant⁷. The appointment of a person to be chancellor of a diocese is to be for the period beginning with the date of the appointment and ending with the date on which he attains the age at which a circuit judge is obliged to vacate that office⁸. He may, however, resign his office by instrument in writing under his hand addressed to, and served on, the bishop of the diocese⁹ and may be removed by that bishop if he is incapable of acting or unfit to act¹⁰. He may continue to act as chancellor for the purpose of any proceedings or cause of faculty¹¹ in the consistory court of the diocese during the course of which he attains the age at which a circuit judge is obliged to vacate that office as if the date of the conclusion in that court of those proceedings or that cause, as the case may be, were the date on which he attains that age¹². Furthermore, where the bishop of a diocese considers it desirable in the interests of the diocese to retain the chancellor of the diocese in office after the time at which he would otherwise retire, he may from time to time authorise the continuance in office of the chancellor until such date, not being later than the date on which the chancellor attains the age at which a puisne judge of the High Court is obliged to vacate that office¹³, as he thinks fit¹⁴.

Of the judges of each of the Arches Court of Canterbury and the Chancery Court of York respectively¹⁵, one, who must be a judge of both courts (and, in respect of his jurisdiction in the province of Canterbury is styled Dean of the Arches and, in respect of his jurisdiction in the province of York, is styled Auditor, and is referred to as the Dean of the Arches and Auditor), must be appointed by the archbishops of Canterbury and York jointly with the approval of Her Majesty signified by warrant under the sign manual¹⁶. Two must be persons in holy orders¹⁷, two must be communicant laymen¹⁸ with appropriate judicial experience¹⁹ and the others must be all the diocesan chancellors (in whichever province), except the chancellor of the diocese in Europe²⁰. A person appointed to be Dean of the Arches and Auditor must be either a person who holds or has held a 10 year High Court qualification within the meaning of the Courts and Legal Services Act 1990²¹, or a person who holds or has held high judicial office, and, before appointing a layman, the archbishops of Canterbury and York must satisfy themselves that he is a communicant²². The appointment of any person, other than a diocesan chancellor, to be a judge of either of the relevant courts is to be for a period beginning with the date of the appointment and ending with the date on which that person attains the age of 75 years²³. The Dean of the Arches and Auditor may, however, resign his office by instrument in writing under his hand addressed to, and served on, the archbishops of Canterbury and York; and may be removed by those archbishops of Canterbury and York jointly if he is incapable of acting or unfit to act²⁴. Any other judge of either of those courts may resign his office by instrument in writing under his hand addressed to, and served on, the archbishop of the relevant province and may be removed by the archbishop of that province if he is incapable of acting or unfit to act²⁵. Any judge of either of those courts may continue to act as a judge of that court for the purpose of any proceedings in that court during the course of which he attains the age of 75 years as if the

date of the conclusion in that court of those proceedings were the date on which he attains that age²⁶.

Judges appointed under the above provisions must take the required oaths before starting to perform their duties²⁷. Provision is made for the appointment of deputy judges²⁸ and for the number of chancellorships which a person can hold to be limited²⁹.

The Court of Ecclesiastical Causes Reserved³⁰ must be constituted of five judges appointed by Her Majesty, and of them two must be persons who hold, or have held, high judicial office and who make a declaration that they are communicants and three must be persons who are, or have been, diocesan bishops³¹.

1 As to consistory courts see PARA 805 ante.

2 Ecclesiastical Jurisdiction Measure 1963 s 2(1).

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Ecclesiastical Jurisdiction Measure 1963 s 2(1A) (s 2(1A), (4A) added by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 8, Sch 4 para 2(a), (d)). As to the Dean of the Arches and Auditor see the text and notes 16, 21 infra.

5 As to when a person has such a qualification see PARA 515 note 1 ante.

6 Ecclesiastical Jurisdiction Measure 1963 s 2(2) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10, para 17). 'High judicial office' has the meaning assigned to it by the Appellate Jurisdiction Act 1876 s 25 (as amended) (ie the office of Lord Chancellor or, as to England and Wales, a Court of Appeal or High Court judge, as to Northern Ireland, a judge of the High Court or Court of Appeal in Northern Ireland, and as to Scotland, a judge of the Court of Session: see PARA 365 ante): Ecclesiastical Jurisdiction Measure 1963 s 66(1).

7 Ibid s 2(2). 'Communicant' means a person who has received communion according to the use of the Church of England or of a church in communion therewith at least once within the 12 months preceding the date of his declaration that he fulfils that requirement, or if a declaration is not required of him, at least once within the 12 months preceding the date upon which he is offered the appointment or requested to act in a capacity for which that qualification is required: s 66(1). As to the communion service according to the use of the Church of England see ECCLESIASTICAL LAW.

8 Ibid s 2(4) (s 2(4) amended by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 8, Sch 4 para 2(c); and by the Ecclesiastical Judges and Legal Officers Measure 1976 s 1(1), (3)). As to circuit judges see PARAS 522-525 ante; and as to judicial retirement dates see PARA 535 ante.

9 Ecclesiastical Jurisdiction Measure 1963 s 2(4)(a).

10 See ibid s 2(4)(b).

11 As to faculties (grants of permission by the court) see ECCLESIASTICAL LAW. See also CREMATION AND BURIAL para 1125 post.

12 Ecclesiastical Jurisdiction Measure 1963 s 2(4)(c) (as amended: see note 8 supra).

13 As to puisne judges of the High Court see PARAS 515, 602, 619 ante; and as to judicial retirement dates see PARA 535 ante.

14 Ecclesiastical Jurisdiction Measure 1963 s 2(4A) (as added: see note 4 supra).

15 As to the courts referred to in the text see PARA 805 ante.

16 Ecclesiastical Jurisdiction Measure 1963 s 3(1), (2)(a) (s 3(1), (2), (3), (5)-(7) amended by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 8, Sch 4 para 3).

17 See the Ecclesiastical Jurisdiction Measure 1963 s 3(2)(b). As to persons in holy orders see ECCLESIASTICAL LAW.

18 See ibid s 3(2)(c), (4).

- 19 See *ibid* s 3(2)(c).
- 20 See *ibid* s 3(2)(d) (as added: see note 16 *supra*).
- 21 As to when a person has such a qualification see PARA 515 note 11 *ante*.
- 22 Ecclesiastical Jurisdiction Measure 1963 s 3(3) (as amended: see note 4 *supra*; also amended by the Courts and Legal Services Act 1990 Sch 10 para 18).
- 23 Ecclesiastical Jurisdiction Measure 1963 s 3(5) (as amended; see note 4 *supra*; also amended by the Ecclesiastical Judges and Legal Officers Measure 1976 s 1(2), (3)).
- 24 See the Ecclesiastical Jurisdiction Measure 1963 s 3(5)(a).
- 25 See *ibid* s 3(5)(b).
- 26 *Ibid* s 3(5)(c) (as added: see note 23 *supra*).
- 27 See *ibid* ss 2(5), 3(7), (8), Sch 1 (as amended); and ECCLESIASTICAL LAW.
- 28 See *ibid* s 4 (as amended); and ECCLESIASTICAL LAW.
- 29 See *ibid* s 2A (as added); and ECCLESIASTICAL LAW.
- 30 As to the Court of Ecclesiastical Causes Reserved see PARA 805 *ante*.
- 31 Ecclesiastical Jurisdiction Measure 1963 s 5.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

806 Judges of ecclesiastical courts

TEXT AND NOTES 4, 16-26--The Lord Chancellor's functions under the 1963 Measure ss 2(1A), 3 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 6--1963 Measure s 2(2) further amended: Church of England (Miscellaneous Provisions) Measure 2006 s 7(2).

NOTE 6--Definition of 'high judicial office' substituted: 1963 Measure s 66(1) (amended by Constitutional Reform Act 2005 Sch 17 para 16(3) (in force 1 October 2009: SI 2009/1604)).

807. Jurisdiction of ecclesiastical courts.

The consistory court of a diocese¹ has original jurisdiction to hear and determine:

- 301 (1) proceedings upon articles charging an offence under the Ecclesiastical Jurisdiction Measure 1963 committed by a priest or deacon who when the offence was alleged to have been committed, or when the proceedings were instituted, held preferment² in the diocese or resided therein, not being an offence involving a matter of doctrine, ritual or ceremonial³;
- 302 (2) a cause of faculty⁴ for authorising any act relating to land within the diocese, or to anything on or in such land, being an act for the doing of which the decree of a faculty is requisite⁵ or the sale of books comprised in a library within the diocese, being a library to which the Parochial Libraries Act 1708 applies⁶;
- 303 (3) proceedings for an injunction or restoration order under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991⁷;
- 304 (4) proceedings upon any *jus patronatus* awarded by the bishop of the diocese⁸;
- 305 (5) certain proceedings under the Pluralities Act 1838⁹;
- 306 (6) any other proceedings which, immediately before 31 July 1963, it had power to hear and determine, not being proceedings jurisdiction to hear and determine which is expressly abolished by the 1963 Measure¹⁰.

The Arches Court of Canterbury and the Chancery Court of York¹¹ each have jurisdiction to hear and determine appeals from judgments, orders or decrees of consistory courts of dioceses within the provinces for which they are constituted respectively, being judgments, orders or decrees given, made or pronounced:

- 307 (a) in such proceedings as are mentioned in heads (1), (5) and (6) above; or
- 308 (b) in causes of faculty not involving a matter of doctrine, ritual or ceremonial; or
- 309 (c) in proceedings for an injunction under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991¹² or for a restoration order under that Measure¹³,

and from interlocutory orders of such consistory courts in causes of faculty involving doctrine, ritual or ceremonial¹⁴. Each of those courts also has jurisdiction to hear and determine appeals from judgments, orders or decrees of the Vicar-General's court of the province of Canterbury or York¹⁵, as the case may be¹⁶. An appeal which either of those courts has jurisdiction to entertain lies, in a civil suit, with leave¹⁷ at the instance of any party to the proceedings, and in a criminal suit, at the instance of any party to the proceedings on a question of law and the defendant on a question of fact¹⁸. Appeals must be lodged and conducted in such manner as may be prescribed¹⁹.

The Court of Ecclesiastical Causes Reserved²⁰ has original jurisdiction to hear and determine:

- 310 (i) proceedings upon articles charging an offence against the laws ecclesiastical involving a matter of doctrine, ritual or ceremonial committed by a priest or deacon who when the offence was alleged to have been committed, or when the proceedings were instituted, held preferment in a diocese or resided therein, or by an archbishop or a bishop who, at one of those times, was a diocesan or a suffragan commissioned by a diocesan or (not being either a diocesan or a suffragan) held preferment in a diocese or resided therein;
- 311 (ii) all suits of *duplex querela*²¹;

and also has jurisdiction to hear and determine appeals from judgments, orders or decrees of consistory courts of dioceses given, made or pronounced in causes of faculty involving a matter

of doctrine, ritual or ceremonial²². An appeal which, by virtue of these provisions, the Court of Ecclesiastical Causes Reserved has jurisdiction to entertain lies at the instance of any party to the proceedings²³.

The Judicial Committee of the Privy Council has jurisdiction to hear certain ecclesiastical appeals²⁴.

1 As to consistory courts see PARA 805 ante.

2 'Preferment' includes an archbishopric, a bishopric, archdeaconry, dignity or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty: Ecclesiastical Jurisdiction Measure 1963 s 66(1).

3 Ibid s 6(1)(a). As to ecclesiastical offences see ECCLESIASTICAL LAW.

4 As to faculties (grants of permission) see ECCLESIASTICAL LAW.

5 For an example of such an act see CREMATION AND BURIAL para 1125 post (removal of dead body from consecrated ground).

6 Ecclesiastical Jurisdiction Measure 1963 s 6(1)(b).

7 Ie under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 13 (see ECCLESIASTICAL LAW): Ecclesiastical Jurisdiction Measure 1963 s 6(1)(bb) (added by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 8, Sch 4 para 5).

8 Ecclesiastical Jurisdiction Measure 1963 s 6(1)(c). A *jus patronatus* is a process instituted by the bishop, if he so thinks fit, at the request of either of the parties claiming to be patrons of a benefice in certain circumstances, or either of the clergymen presented by them, or if he has a doubt as to the title of the patron claiming to present: see ECCLESIASTICAL LAW.

9 See ibid s 6(1)(d) (amended by the Repair of Benefice Buildings Measure 1972 s 35, Sch 2); and ECCLESIASTICAL LAW.

10 Ecclesiastical Jurisdiction Measure 1963 s 6(1)(e). Nothing contained in s 6(1) (as amended) extends, or is to be construed as extending, the jurisdiction of the consistory court in faculty matters to any land or to anything on or in such land in respect of which such court had no jurisdiction immediately before the passing of the 1963 Measure (ie 31 July 1963): s 6(2).

11 As to the courts referred to in the text see PARA 805 ante.

12 Ie under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 13(4): see ECCLESIASTICAL LAW.

13 Ie under ibid s 13(5); see ECCLESIASTICAL LAW.

14 Ecclesiastical Jurisdiction Measure 1963 s 7(1) (s 7(1), (2) amended by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 6).

15 As to the Vicar-General's court see PARA 805 ante; and ECCLESIASTICAL LAW.

16 Ecclesiastical Jurisdiction Measure 1963 s 7(1A) (s 7(1A) added, and s 7(2) amended, by the Care of Cathedrals (Supplementary Provisions) Measure 1994 s 8, Schedule para 2).

17 Ie with the leave of the consistory court or the Vicar-General's court, as the case may be, or, if leave is refused by that court, of the Dean of the Arches and Auditor: Ecclesiastical Jurisdiction Measure 1963 s 7(2) (as amended: see notes 14, 16 supra).

18 Ibid s 7(2) (as amended): see notes 14, 16 supra).

19 Ibid s 7(3). See further ECCLESIASTICAL LAW.

20 As to the court of Ecclesiastical Causes Reserved see PARA 805 ante.

21 A suit of *duplex querela* (double complaint) may be brought by the presentee to a benefice if the bishop refuses institution or admission on the grounds of doctrine or ritual or, refusing on some other ground sufficient

in law, fails to signify his refusal to the patron and the presentee in writing or, apparently, refuses on some ground insufficient in law to justify the refusal: see ECCLESIASTICAL LAW.

22 Ecclesiastical Jurisdiction Measure 1963 s 9(1).

23 Ibid s 9(2). For the purpose of determining whether an appeal from a judgment, order or decree of a consistory court in a cause of faculty lies to the Arches Court of Canterbury or the Chancery Court of York under s 7(1)(b) (see head (b) in the text) or to the Court of Ecclesiastical Causes Reserved by virtue of s 9 (as amended), it is be the duty of the chancellor to certify upon the application of the party desiring to appeal whether or not a question of doctrine, ritual or ceremonial is involved: s 9(3) (s 9(3) amended, and s 9(4)-(6) added, by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 7). In any proceedings in the Court of Ecclesiastical Causes Reserved on an appeal from a judgment, order or decree of a consistory court of a diocese given, made or pronounced in a cause of faculty, the court (1) if it considers that it has heard and determined the appeal in so far as it relates to matter involving doctrine, ritual or ceremonial but that the appeal relates also to other matter, may, if it considers it expedient to do so, deal with the other matter, but otherwise must refer it; and (2) if it considers that no matter of doctrine, ritual or ceremonial is involved, must refer the appeal (notwithstanding any certificate to the contrary issued under the Ecclesiastical Jurisdiction Measure 1963 s 9(3) (as so amended)) to the Arches Court of Canterbury or the Chancery Court of York, as appropriate, to be heard and determined by that court: s 9(4) (as so added). In any proceedings in the Arches Court of Canterbury or the Chancery Court of York on an appeal from a judgment, order or decree of a consistory court of a diocese given, made or pronounced in a cause of faculty, the court may, if it considers that the appeal relates to matter involving doctrine, ritual or ceremonial, refer the appeal (notwithstanding any certificate to the contrary issued under s 9(3) (as so amended)) to the Court of Ecclesiastical Causes Reserved to be heard and determined by that court: s 9(5) (as so added). Subject to any rules made under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 26 (see ECCLESIASTICAL LAW), any reference of an appeal under the Ecclesiastical Jurisdiction Measure 1963 s 9(4) or (5) (as so added) must be in accordance with such practice directions as may be issued jointly by the Dean of the Arches and Auditor and the two judges of the Court of Ecclesiastical Causes Reserved appointed in accordance with s 5 (see PARA 806 ante) by virtue of their holding, or having held, high judicial office: s 9(6) (as so added).

24 See PARA 411 ante.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601l. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(2) ECCLESIASTICAL COURTS/808. Court sittings.

808. Court sittings.

Any court, commission, committee or inquiry established or held by or under the provisions of the Ecclesiastical Jurisdiction Measure 1963¹ and the Vicar-General's court of each of the provinces of Canterbury and York² may be held in any place convenient to the court, commission, committee or person holding the inquiry, due regard being paid to the convenience of parties and witnesses³.

Proceedings in the consistory court of a diocese are generally⁴ heard and disposed of by the chancellor of the diocese⁵ but proceedings in a cause of faculty⁶ may be heard and disposed of

by the bishop of the diocese alone or with the chancellor if, and in so far as, provision in that behalf is made in the letters patent by which the chancellor of the diocese is appointed⁷.

Proceedings in the Arches Court of Canterbury or the Chancery Court of York⁸ are heard and disposed of (1) in the case of an appeal from a judgment of the consistory court of a diocese given in specified proceedings⁹, by all the judges of the court except the diocesan chancellors¹⁰; and (2) in any other case¹¹, by the Dean of the Arches and Auditor¹² and two diocesan chancellors designated by him for the purposes of the case¹³.

The trial of a person by the Court of Ecclesiastical Causes Reserved¹⁴ under Part VI of the 1963 Measure¹⁵ for an ecclesiastical offence involving a matter of doctrine, ritual or ceremonial is conducted, so far as possible, in the same way as a criminal trial¹⁶, as is the trial of a priest or deacon by a consistory court under Part IV of the 1963 Measure¹⁷ for other ecclesiastical offences¹⁸.

1 As to the courts established under the provisions of the Ecclesiastical Jurisdiction Measure 1963 see PARA 805 ante.

2 As to the Vicar-General's court see PARA 805 ante; and ECCLESIASTICAL LAW.

3 Ecclesiastical Jurisdiction Measure 1963 s 80 (amended by the Care of Cathedrals (Supplementary Provisions) Measure 1994 s 8, Schedule para 7).

4 I.e. other than proceedings falling within the Ecclesiastical Jurisdiction Measure 1963 s 6(1)(a) (see PARA 807 ante at head (1) in the text) or Pt IV (ss 22-31) (as amended) (trials of priest and deacons for ecclesiastical offences not involving matters of doctrine, ritual or ceremonial): see ECCLESIASTICAL LAW.

5 Ibid s 46(1).

6 As to faculties (grants of permission) see ECCLESIASTICAL LAW.

7 Ecclesiastical Jurisdiction Measure 1963 s 46(1) proviso. Subject to the provisions of s 69 proviso (transitional provisions), proceedings to which s 46 applies other than those falling within s 6(1)(b) (see PARA 807 ante at head (2) in the text) must be instituted and conducted in such manner as may be prescribed: s 46(2). See further ECCLESIASTICAL LAW.

8 As to the courts referred to in the text see PARA 805 ante.

9 I.e. such proceedings as are mentioned in the Ecclesiastical Jurisdiction Measure 1963 s 6(1)(a): see PARA 807 ante at head (1) in the text.

10 Ibid s 47(1)(a) (substituted by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 8, Sch 4 para 8).

11 I.e. any other case not falling within the Ecclesiastical Jurisdiction Measure 1963 Pt IV (ss 22-31) (as amended) (trials of priest and deacons for ecclesiastical offences not involving matters of doctrine, ritual or ceremonial): see ECCLESIASTICAL LAW.

12 As to the Dean of the Arches and Auditor see PARA 806 ante.

13 Ecclesiastical Jurisdiction Measure 1963 s 47(1)(b) (as substituted: see note 10 supra). Subject to the provisions of s 69 proviso (transitional provisions), proceedings in those courts must be instituted and conducted in such manner as may be prescribed: s 47(2). See further ECCLESIASTICAL LAW.

14 As to the Court of Ecclesiastical Causes Reserved see PARA 805 ante.

15 I.e. under the Ecclesiastical Jurisdiction Measure 1963 Pt VI (ss 38-45): see ECCLESIASTICAL LAW.

16 See ibid s 45; and ECCLESIASTICAL LAW.

17 I.e. under ibid Pt IV (ss 22-31) (as amended) (trials of priest and deacons for ecclesiastical offences not involving matters of doctrine, ritual or ceremonial): see ECCLESIASTICAL LAW.

18 See ibid s 28; and ECCLESIASTICAL LAW.

UPDATE**801-820 Courts and Tribunals of Special Statutory Jurisdiction**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/809. The Employment Appeal Tribunal.

(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION**809. The Employment Appeal Tribunal.**

The Employment Appeal Tribunal ('the Appeal Tribunal')¹ is to consist of: (1) such number of judges as may be nominated from time to time by the Lord Chancellor² from the judges, other than the Lord Chancellor, of the High Court³ and the Court of Appeal⁴; (2) at least one judge of the Court of Session nominated from time to time by the Lord President of that Court; and (3) such number of other members as may be appointed⁵ from time to time by Her Majesty on the joint recommendation of the Lord Chancellor and the Secretary of State ('appointed members')⁶. No judge is, however, to be nominated a member of the Appeal Tribunal except with his consent⁷.

After consultation with the Lord President of the Court of Session, the Lord Chancellor must appoint one of the judges so nominated to be President of the Appeal Tribunal⁸.

The Appeal Tribunal is a superior court of record and has an official seal which must be judicially noticed⁹.

The Appeal Tribunal must have a central office in London¹⁰. It may, however, sit at any time and in any place in Great Britain¹¹; and it may sit, in accordance with directions given by the President of the Appeal Tribunal¹², either as a single tribunal or in two or more divisions concurrently¹³.

With the consent of the parties, proceedings before the Appeal Tribunal may be heard by a judge and one appointed member or by a judge and three appointed members¹⁴; but, in default of such consent, proceedings before the Appeal Tribunal must be heard by a judge and either two or four appointed members, so that in either case there is an equal number of persons whose knowledge or experience of industrial relations is as representatives of employers and of persons whose knowledge and experience of industrial relations is as representatives of workers¹⁵.

The Secretary of State may appoint such officers and servants of the Employment Appeal Tribunal as he may determine, subject to the approval of the Minister for the Civil Service as to numbers and as to terms and conditions of service¹⁶.

An appeal lies to the Appeal Tribunal¹⁷ on any question of law¹⁸ arising from any decision¹⁹ of, or arising in any proceedings before, an employment tribunal²⁰ under, or by virtue of, the Equal

Pay Act 1970²¹; the Sex Discrimination Act 1975²²; the Race Relations Act 1976²³; the Trade Union and Labour Relations (Consolidation) Act 1992²⁴; the Disability Discrimination Act 1995²⁵; the Employment Rights Act 1996; the Employment Tribunals Act 1996; the National Minimum Wage Act 1998²⁶; the Working Time Regulations 1998²⁷; the Tax Credits Act 1999²⁸; the Transnational Information and Consultation of Employees Regulations 1999²⁹; or the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000³⁰.

The Employment Appeal Tribunal also has jurisdiction, in respect of matters other than appeals, which is conferred on it by or under the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Tribunals Act 1996 or any other Act³¹.

The Employment Appeal Tribunal is discussed in more detail elsewhere in this work³².

1 The Employment Appeal Tribunal established under the Employment Protection Act 1975 s 87 (repealed) continues in existence: Employment Tribunals Act 1996 s 20(1).

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 As to High Court judges see PARAS 515, 602, 619 ante.

4 As to Court of Appeal judges see PARAS 515, 637 ante.

5 The members so appointed must be persons who appear to the Lord Chancellor and the Secretary of State to have special knowledge or experience of industrial relations, either as representatives of employers or as representatives of workers: Employment Tribunals Act 1996 s 22(2). As to the tenure of office of such members see EMPLOYMENT vol 41 (2009) PARA 1385.

6 Ibid ss 22(1), 42(1). As to temporary membership of the tribunal see EMPLOYMENT vol 41 (2009) PARA 1386.

7 Ibid s 22(4).

8 Ibid s 22(3).

9 Ibid s 20(3). As to courts of record and superior courts see PARAS 308-309 ante. The Employment Appeal Tribunal is not a court for the purposes of the Human Rights Act 1998 s 4 and cannot make a declaration of incompatibility: see *Whittaker v P and D Watson (t/a P & M Watson Haulage)* [2002] All ER (D) 424 (Feb), EAT.

10 Ibid s 20(2). Section 20(2) is subject to the Transnational Information and Consultation of Employees Regulations 1999, SI 1999/3323, reg 34 (jurisdiction of Appeal Tribunals: see EMPLOYMENT vol 41 (2009) PARA 1241); Employment Tribunals Act 1996 s 20(4) (added by the Transnational Information and Consultation of Employees Regulations 1999, SI 1999/3323, reg 35(1), (2)).

11 Employment Tribunals Act 1996 s 20(2).

12 As to the President of the Employment Tribunals (England and Wales) see EMPLOYMENT vol 41 (2009) PARA 1364.

13 Employment Tribunals Act 1996 s 28(1).

14 Ibid s 28(3). Proceedings on an appeal on a question arising from any decision of, or arising in any proceedings before, an employment tribunal consisting of a chairman alone (see EMPLOYMENT vol 41 (2009) PARA 1368) are to be heard by a judge alone unless a judge directs that the proceedings are to be heard in accordance with s 28(2) (see infra) or s 28(3): s 28(4) (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)).

15 Employment Tribunals Act 1996 s 28(2).

16 Ibid s 26. As to the remuneration and allowances of appointed members, temporary members, officers and other staff see EMPLOYMENT vol 41 (2009) PARA 1389.

17 As to the procedure for bringing appeals see EMPLOYMENT vol 41 (2009) PARA 1464 et seq.

18 See EMPLOYMENT vol 41 (2009) PARA 1391.

19 It is the actual decision which must be under appeal, not just the reasons (for an otherwise favourable decision): *Harrod v Ministry of Defence* [1981] ICR 8, EAT.

20 As to employment tribunals see PARA 852 post; and EMPLOYMENT vol 41 (2009) PARA 1363 et seq.

21 See DISCRIMINATION vol 13 (2007 Reissue) PARA 424 et seq.

22 See DISCRIMINATION vol 13 (2007 Reissue) PARA 337 et seq.

23 See DISCRIMINATION vol 13 (2007 Reissue) PARA 436 et seq.

24 See EMPLOYMENT vol 40 (2009) PARA 846 et seq.

25 See DISCRIMINATION vol 13 (2007 Reissue) PARA 507 et seq.

26 See EMPLOYMENT vol 39 (2009) PARA 142 et seq.

27 See EMPLOYMENT vol 39 (2009) PARA 244 et seq.

28 See INCOME TAXATION.

29 It is the Transnational Information and Consultation of Employees Regulations 1999, SI 1999/3323: see EMPLOYMENT vol 41 (2009) PARA 1205 et seq.

30 Employment Tribunals Act 1996 s 21(1) (amended by the Employment Rights (Dispute Resolution) Act 1998 ss 1(2)(a), 15, 17(3), Sch 1 para 17(1), (2), Sch 2; the National Minimum Wage Act 1998 ss 29, 53, Sch 3; the Tax Credits Act 1999 ss 7, 19(4), Sch 3 para 5, Sch 6; and by the Working Time Regulations 1998, SI 1998/1833, reg 34(a); the Transnational Information and Consultation of Employees Regulations 1999, SI 1999/3323, reg 35(1), (3)(a), (b); and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, SI 2000/1551, reg 10, Schedule para 1(b)). The Employment Tribunals Act 1996 s 21(1) (as so amended) does not affect any provision contained in, or made under, any Act which provides for an appeal to lie to the Employment Appeal Tribunal, whether from an employment tribunal, the certification officer or any other person or body, otherwise than on a question to which s 21(1) (as so amended) applies: s 21(3) (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). As to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, SI 2000/1551, see EMPLOYMENT vol 39 (2009) PARA 61 et seq.

No appeal lies except to the Appeal Tribunal from any decision of an employment tribunal under or by virtue of the Acts listed, or the regulations referred to, in the Employment Tribunals Act 1996 s 21(1) (as so amended): s 21(2) (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a); and by the Working Time Regulations 1998, SI 1998/1833, reg 34(b)).

31 Employment Tribunals Act 1996 s 21(4) (added by the Employment Rights (Dispute Resolution) Act 1998 Sch 1 para 17(1), (3)).

32 See EMPLOYMENT vol 41 (2009) PARA 1384 et seq.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory

framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

809 The Employment Appeal Tribunal

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 5-8--Employment Tribunals Act 1996 s 22 amended: Constitutional Reform Act 2005 Sch 4 para 246, Sch 18 Pt 2. See further s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 6--Any recommendation for appointment to the office of member of the Employment Appeal Tribunal in exercise of the function under the Employment Tribunals Act 1996 s 22(1)(c) (head (3) in the text) must be made, by virtue of the 2005 Act s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see PARA 515B.18.

TEXT AND NOTES 17-30--Refers also to the Employment Relations Act 1999 (see EMPLOYMENT); the Equality Act 2006 (see DISCRIMINATION); the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, SI 2003/3049 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 625); the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, SI 2004/1713 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 626); the Employment Equality (Age) Regulations 2006, SI 2006/1031 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 754 et seq); the European Co-operative Society (Involvement of Employees) Regulations 2006, SI 2006/2059; the Companies (Cross-Border Mergers) Regulations 2007, SI 2007/2974; and the Cross-border Railway Services (Working Time) Regulations 2008, SI 2008/1660: 1996 Act s 21(1) (amended by Employment Relations Act 2004 s 38; Equality Act 2006 Sch 3 para 57; SI 2003/3049; SI 2004/1713; SI 2006/1031; SI 2006/2059; SI 2007/2974; SI 2008/1660).

TEXT AND NOTE 28--Reference to Tax Credits Act 1999 omitted: Employment Tribunals Act 1996 s 21(1) (amended by Tax Credits Act 2002 Sch 6).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/810. The Immigration Appeal Tribunal.

810. The Immigration Appeal Tribunal.

The Immigration Appeal Tribunal was established by the Immigration Appeals Act 1969 (now repealed) and is continued in being by the Immigration and Asylum Act 1999¹. The members of the Immigration Appeal Tribunal are appointed by the Lord Chancellor² who may appoint such number of legally qualified³ members and of other members as he considers appropriate⁴. The Lord Chancellor must appoint one legally qualified member to be President of the Tribunal and another such member to be Deputy President⁵. The Deputy President has such functions in relation to the Tribunal as the President may assign to him and may act on behalf of the President if he is temporarily absent or otherwise unable to act⁶.

Each member of the Tribunal holds and vacates his office in accordance with the terms of his appointment and is eligible for reappointment on ceasing to hold office⁷. He may resign his

office at any time by giving written notice to the Lord Chancellor and must, subject to the Lord Chancellor's power to authorise his continuance in office up to the age of 75⁸, vacate his office on the day on which he reaches the age of 70 years⁹. The Lord Chancellor must pay to the members such remuneration and allowances as he may determine¹⁰. If a person ceases to be a member and it appears to the Lord Chancellor that there are special circumstances which make it right that he should receive compensation, the Lord Chancellor may pay him a sum of such amount as the Lord Chancellor may determine¹¹.

For the purpose of hearing and determining appeals under the Immigration and Asylum Act 1999 or any matter preliminary or incidental to such an appeal, the Tribunal must sit at such times and in such place or places as the Lord Chancellor may direct¹². The Tribunal may sit in two or more divisions¹³ and the jurisdiction of the Tribunal may be exercised by such number of members as the President may direct¹⁴.

The Lord Chancellor may appoint such staff for the Tribunal as he may determine¹⁵. Their remuneration and such expenses of the Tribunal as the Lord Chancellor may determine are to be defrayed by the Lord Chancellor¹⁶. Administrative support for the Tribunal is provided by the Court Service¹⁷.

The jurisdiction and procedure of the Tribunal is discussed in detail elsewhere in this work¹⁸.

1 Immigration and Asylum Act 1999 s 56(1).

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 A person is legally qualified if: (1) he has a seven year general qualification, within the meaning of the Courts and Legal Services Act 1990 s 71 (see PARA 530 note 1 ante); (2) he is an advocate or solicitor in Scotland of at least seven years' standing; (3) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing; or (4) he has such legal and other experience as appears to the Lord Chancellor to make him suited for appointment as a legally qualified member: Immigration and Asylum Act 1999 s 56(2), Sch 2 para 1(3).

4 Ibid Sch 2 para 1(1), (2).

5 Ibid Sch 2 para 2(1).

6 Ibid Sch 2 para 2(2), (3).

7 Ibid Sch 2 para 3(1)(a), (b).

8 Ie subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6): see PARA 535 ante.

9 Immigration and Asylum Act 1999 Sch 2 para 3(1)(c), (d), (2).

10 Ibid Sch 2 para 4.

11 Ibid Sch 2 para 5.

12 Ibid Sch 2 para 6(1).

13 Ibid Sch 2 para 6(2).

14 Ibid Sch 2 para 6(3). A direction under Sch 2 para 6(3) may (1) be given in relation to a specified case or category of case; (2) provide for the jurisdiction to be exercised by a single member; (3) require the member exercising the jurisdiction, or a specified number of the members exercising the jurisdiction, to be legally qualified; and (4) be varied at any time by a further direction given by the President: Sch 2 para 6(4). 'Specified' means specified in the direction: Sch 2 para 6(5). As to the constitution of the Immigration Appeal Tribunal in relation to various types of hearings relating to appeals see *Practice Direction* [2001] Imm AR 359.

15 Immigration and Asylum Act 1999 Sch 2 para 7(1).

16 Ibid Sch 2 para 7(2), (3).

17 See PARA 502 ante.

18 See BRITISH NATIONALITY, IMMIGRATION AND ASYLUM.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/811. Competition Commission Appeal Tribunals.

811. Competition Commission Appeal Tribunals.

Subject to certain transitional provisions¹, the Restrictive Practices Court Act 1976, which made provision for the constitution and powers of the Restrictive Practices Court first established by the Restrictive Trade Practices Act 1956², has been repealed³. The Competition Act 1998, which entered fully into force on 1 March 2000, makes new provision for the strengthening of United Kingdom competition law⁴. Under the Competition Act 1998, an appeal made to the Competition Commission⁵ is to be determined by an appeal tribunal⁶. There is a President of the Competition Commission Appeal Tribunals who is appointed by the Secretary of State⁷ after consultation with the Lord Chancellor⁸. On receipt of a notice of appeal, the president must constitute an appeal tribunal to deal with the appeal⁹. An appeal tribunal is to consist of (1) a chairman, who must be either the president or a person appointed by him to be chairman from the panel of chairmen¹⁰; and (2) two other appeal panel members appointed by the president¹¹.

The Secretary of State may, after consulting the President of the Competition Commission Appeal Tribunals and such other persons as he considers appropriate, make rules with respect to appeals and appeal tribunals¹². The rules may provide for the appointment of a Registrar of Appeal Tribunals¹³ and make provision with regard to notice of appeal¹⁴, rejection of an appeal as disclosing no valid grounds of appeal, or on grounds relating to vexatious litigation¹⁵, pre-hearing reviews and preliminary matters¹⁶, the conduct of the hearing¹⁷, payment of interest¹⁸, fees¹⁹, withdrawal of an appeal²⁰, interim orders²¹, joinder of parties and consolidation of proceedings²², and regulating or prescribing matters incidental to or consequential on an appeal on a point of law²³. The rules may confer functions on the President²⁴.

An appeal lies (a) on a point of law arising from a decision of an appeal tribunal²⁵, or (b) from any decision of an appeal tribunal as to the amount of a penalty²⁶. Such an appeal may be

made only (i) to the appropriate court²⁷; (ii) with leave²⁸; and (iii) at the instance of a party or at the instance of a person who has a sufficient interest in the matter²⁹.

1 See the Competition Act 1998 s 74(2), Sch 13; and note 3 *infra*.

2 See the Restrictive Trade Practices Act 1956 s 2 (repealed).

3 Competition Act 1998 ss 1(a), 74(3), Sch 14 Pt I. Proceedings in respect of certain applications to the Restrictive Practices Court which were not determined before 1 March 2000 ceased on that date, but without prejudice to the court's power to award costs: see Sch 13 para 8. Other proceedings ('continuing proceedings') which had begun before that date were to be determined by the court: see Sch 13 paras 14-17. On an application made jointly to the court by all the parties to any continuing proceedings, the court, if satisfied that the parties wished it to do so, was to discontinue the proceedings: see Sch 13 para 18.

4 See COMPETITION vol 18 (2009) PARA 115 *et seq*.

5 *Ie* an appeal under the Competition Act 1998 s 46 or s 47: see COMPETITION vol 18 (2009) PARAS 166, 167.

6 *Ibid* s 48(1). 'Appeal tribunal' means an appeal tribunal established in accordance with the provisions of s 45(7), Sch 7 Pt III for the purpose of hearing an appeal under s 46 or 47: s 59(1).

7 *Ie* the Secretary of State for Trade and Industry: see TRADE AND INDUSTRY vol 97 (2010) PARA 802.

8 Competition Act 1998 Sch 7 para 4; and see COMPETITION vol 18 (2009) PARA 9. As to the Lord Chancellor see PARA 501 *ante*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*.

9 *Ibid* Sch 7 para 27(1). If the president is absent or otherwise unable to act, the Secretary of State may appoint as acting president an appeal panel member who is qualified to act as chairman of a tribunal: Sch 7 para 25.

10 The panel of chairmen consists of appeal panel members with specified legal qualifications and experience: see *ibid* Sch 7 para 26. Before appointing a person who is qualified for appointment to the panel of chairmen, the Secretary of State must consult the Lord Chancellor or Secretary of State for Scotland, as he considers appropriate: Sch 7 para 2(4) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678).

11 Sch 7 para 27(2).

12 *Ibid* s 48(2). Pursuant to this provision the Secretary of State has adopted the Appeal Tribunal Rules: see the Competition Commission Appeal Tribunal Rules 2000, SI 2000/261. As to the power to make subordinate legislation under the Competition Act 1998 see COMPETITION vol 18 (2009) PARA 163.

13 See *ibid* s 48(4), Sch 8 para 5.

14 See *ibid* Sch 8 para 6.

15 See *ibid* Sch 8 para 7.

16 See *ibid* Sch 8 para 8.

17 See *ibid* Sch 8 para 9.

18 See *ibid* Sch 8 para 10.

19 See *ibid* Sch 8 para 11.

20 See *ibid* Sch 8 para 12.

21 See *ibid* Sch 8 para 13.

22 See *ibid* Sch 8 para 14.

23 *Ibid* s 49(3).

24 *Ibid* s 48(3).

25 *Ibid* s 49(1)(a).

26 Ibid s 49(1)(b). As to penalties see ss 36-41; and COMPETITION vol 18 (2009) PARAS 137-139.

27 For these purposes 'the appropriate court' means the Court of Appeal: see ibid s 49(4). As to the Court of Appeal see PARA 634 et seq ante.

28 For these purposes 'leave' means leave of the tribunal in question or of the appropriate court: ibid s 49(4).

29 Ibid s 49(2).

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

811 Competition Commission Appeal Tribunals

NOTE 12--SI 2000/261 replaced: Competition Appeal Tribunal Rules 2003, SI 2003/1372 (amended by SI 2004/2068). See further COMPETITION vol 18 (2009) PARA 16.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/812. The Lands Tribunal.

812. The Lands Tribunal.

The Lands Tribunal¹ is appointed by the Lord Chancellor², and consists of a president and such number of other members as the Lord Chancellor may determine³.

The president must be a person who has either (1) held judicial office under the Crown (whether in the United Kingdom or not); or (2) has a seven year general qualification⁴; or (3) is a member of the Bar of Northern Ireland of at least seven years' standing⁵. Such number of the remaining members as the Lord Chancellor may determine must be persons falling within head (2) or head (3) above or solicitors of the Supreme Court of Northern Ireland of at least seven years' standing and the others must be persons having experience in the valuation of land appointed after consultation with the President of the Royal Institution of Chartered Surveyors⁶. The members may be paid such remuneration, travelling and subsistence allowances as the Lord Chancellor may with Treasury approval determine⁷. The appointments are for terms and

on conditions determined by the Lord Chancellor with the prior approval of the Treasury, members being eligible for reappointment⁸. If, however, a member of the tribunal becomes, in the Lord Chancellor's opinion, unfit to continue in office or incapable of performing his duties, the Lord Chancellor must immediately declare that member's office to be vacant and notify the fact in such manner as he thinks fit, and that office then becomes vacant⁹.

With the approval of the Treasury as to numbers and remuneration, the Lord Chancellor may appoint such officers and servants of the tribunal as he may determine¹⁰. The remuneration and allowances of members of the tribunal, the remuneration of the officers and servants appointed by the Lord Chancellor, and such other expenses as the Treasury may determine must be defrayed out of money provided by Parliament¹¹. Administrative support for the Lands Tribunal is provided by the Court Service¹².

The jurisdiction and procedure of the Tribunal are discussed in detail elsewhere in this work¹³.

1 As to the establishment of the Lands Tribunal (with jurisdiction in England, Wales and Northern Ireland) see the Lands Tribunal Act 1949 s 1(1)(b). There is a separate tribunal for Scotland: see s 1(1)(a).

2 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Lands Tribunal Act 1949 s 2(1). In case of the president's temporary absence or inability to act, the Lord Chancellor may appoint another member to act as deputy and the member so appointed has, when so acting, all the functions of the president: s 2(3).

4 I.e. a general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see PARA 530 note 1 ante): Lands Tribunal Act 1949 s 2(2)(b) (substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 7).

5 Lands Tribunal Act 1949 s 2(2) (amended by the Courts and Legal Services Act 1990 Sch 10 para 7). All Lands Tribunal members are barred from legal practice: Courts and Legal Services Act 1990 s 75, Sch 11.

6 Lands Tribunal Act 1949 s 2(2) (as amended: see note 5 supra).

7 Ibid s 2(6) (amended by the Judicial Pensions Act 1981 s 36, Sch 4). The Judicial Pensions Act 1981 ss 10, 16 et seq (as amended) provide for the payment of pensions and lump sums on retirement or death of the chairman and members of the tribunal: see PARAS 560, 562 et seq ante. Such offices are also qualifying judicial offices for the purposes of the Judicial Pensions and Retirement Act 1993: see PARA 539 ante.

8 Lands Tribunal Act 1949 s 2(5). However, no person may be appointed a member of the tribunal for a term which extends beyond the day on which he attains the age of 70, except in accordance with the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75): Lands Tribunal Act 1949 s 2(5A) (added by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 31). Similarly, the president and other members of the tribunal must vacate their offices on the day on which they attain the age of 70 or such lower age as may for the time being be specified for the purpose: see the Judicial Pensions and Retirement Act 1993 s 26(1), Sch 5. For transitional provisions see ss 26(11), 27, Sch 7. As to judicial retirement ages see PARA 535 ante.

9 Lands Tribunal Act 1949 s 2(4).

10 Ibid s 2(7).

11 Ibid s 2(8) (amended by the Judicial Pensions Act 1981 Sch 4).

12 See PARA 502 ante.

13 See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

812 The Lands Tribunal

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Lands Tribunal Act 1949 ss 1(1), 2 amended to refer only to the Lands Tribunal for Scotland: SI 2009/1307.

NOTE 5--Omit words 'all Lands Tribunal members are barred from legal practice': Courts and Legal Services Act 1990 Sch 11 (amended by SI 2009/1307).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/813. The Transport Tribunal.

813. The Transport Tribunal.

The Transport Tribunal¹ is a court of record² and has an official seal which is to be judicially noticed³. The tribunal consists of a president and two or more chairmen appointed by the Lord Chancellor⁴ (referred to as judicial members)⁵, and two or more other members appointed by the Secretary of State⁶. The president of the tribunal must be a person who has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990⁷, or an advocate or solicitor in Scotland of at least ten years' standing⁸. Each chairman must be a person who has a seven year general qualification⁹, or an advocate or solicitor in Scotland of at least seven years' standing¹⁰.

Each judicial member of the Transport Tribunal holds office until the day on which he attains the age of 70 years and must then retire¹¹. The Lord Chancellor may, if he thinks fit, remove a judicial member from office on the ground of incapacity or misbehaviour¹². A judicial member may at any time by notice in writing to the Lord Chancellor resign his office¹³.

Subject to the above and to the provisions relating to remuneration set out below, a judicial member holds and vacates office in accordance with such terms and conditions as may be determined by the Lord Chancellor at the time of his appointment and will, on ceasing to hold office, be eligible for reappointment¹⁴. A member of the tribunal appointed by the Secretary of State holds and vacates office in accordance with such terms and conditions (both as to his term of office and otherwise) as may be determined by the Secretary of State at the time of his

appointment and will, on ceasing to hold office, be eligible for reappointment¹⁵. A person must not be appointed as a member of the tribunal by the Secretary of State for a term extending beyond the end of the completed year of service in which he reaches the age of 70 years¹⁶. Where, however, the Secretary of State considers it desirable in the public interest that a person should be appointed for a term exceeding that so allowed, that person may be appointed for such term, not extending beyond the date on which he reaches the age of 75 years, as the Secretary of State thinks fit¹⁷. A member appointed by the Secretary of State may at any time by notice in writing to the Secretary of State resign his office¹⁸.

The Lord Chancellor may make available to the Transport Tribunal such staff as he considers necessary for assisting the tribunal in the proper execution of its duties¹⁹. There must be paid to the members of the tribunal such remuneration as the Lord Chancellor may with the consent of the Treasury determine²⁰. Any remuneration so payable and any other expenses of the tribunal must be met by the Lord Chancellor²¹.

Administrative support for the Transport Tribunal is provided by the Court Service²². Its jurisdiction and procedure are discussed in detail elsewhere in this work²³.

1 The number of members of the Transport Tribunal is no longer to be subject to any limit, and the tribunal is no longer to be required to sit in two divisions: Transport Act 1985 s 117(1). Section 117(2), Sch 4 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 253-258) has effect with respect to the constitution, powers and proceedings of the tribunal: s 117(2).

The special panel constituted in accordance with the Transport Act 1962 Sch 10 para 6 (repealed) and any panel appointed under s 88(2)(b) (repealed) are abolished: Transport Act 1985 s 117(3).

2 As to courts of record see PARA 308 ante.

3 Transport Act 1985 s 117(2), Sch 4 para 1.

4 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Transport Act 1985 Sch 4 para 2(1)(a).

6 Ibid Sch 4 para 2(1)(b). The Lord Chancellor must consult the Secretary of State before exercising any of his powers under Sch 4 para 2 (as amended): Sch 4 para 15 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2; the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1) Schedule). For transitional provisions and savings relating to the appointment and tenure of office of the president, chairmen and other members of the tribunal see the Transport Act 1985 s 139(1), Sch 6. The president and chairmen hold qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993: see PARA 539 ante.

7 Transport Act 1985 Sch 4 para 2(2)(a) (Sch 4 para 2(2) substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 65). The reference in the text to a person who has a ten year general qualification is such a qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see PARA 530 note 1 ante.

8 Transport Act 1985 Sch 4 para 2(2)(b) (as substituted: see note 7 supra).

9 Ibid Sch 4 para 2(2A)(a) (Sch 4 para 2(2A) added by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 65). The reference in the text to a seven year general qualification is to such a qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see PARA 530 note 1 ante.

10 Transport Act 1985 Sch 4 para 2(2A)(b) (as added: see note 9 supra). The Lord Chancellor must consult the Lord Advocate before exercising any of his powers under Sch 4 para 2 (as substituted): Sch 4 para 15 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2).

11 Transport Act 1985 Sch 4 para 3(1) (amended by the Judicial Pensions and Retirement Act 1993 ss 26, 31, Sch 6 para 57) which is expressed to be subject to the Transport Act 1985 s 117(2), Sch 4 para 3(2) (repealed), Sch 4 para 3(3)-(4) (see the text and notes 12-13 infra) and to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75) (see PARA 535 ante).

12 Transport Act 1985 Sch 4 para 3(3). The Lord Chancellor must consult the Secretary of State before exercising any of his powers under Sch 4 para 3 (as amended); Sch 4 para 15 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2; the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1) Schedule).

13 Transport Act 1985 Sch 4 para 3(4).

14 Ibid Sch 4 para 3(5).

15 Ibid Sch 4 para 4(1).

16 Ibid Sch 4 para 4(2), which is expressed to be subject to Sch 4 para 4(3) (see the text and note 17 *infra*).

17 Ibid Sch 4 para 4(3).

18 Ibid Sch 4 para 4(4).

19 Ibid s 117(2), Sch 4 para 5 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2).

20 Transport Act 1985 Sch 4 para 6 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2).

21 Transport Act 1985 Sch 4 para 7 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2).

22 See PARA 502 *ante*.

23 See ROAD TRAFFIC vol 40(1) (2007 Reissue) PARAS 256-258.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

813 The Transport Tribunal

TEXT AND NOTES 1-21--The Lord Chancellor's functions under the 1985 Act Sch 4 paras 2(1)(a), 3(4) and (5), 6, 7, 15 and 16 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 1--1985 Act s 117(3) repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 3--Transport Act 1985 s 117(2), Sch 4 para 1 amended: SI 2009/1885.

TEXT AND NOTE 5--Any appointment to the office of president of the Transport Tribunal or chairman of the Transport Tribunal in exercise of the function under the 1985 Act Sch 4 para 2(1)(a) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3, in accordance with ss 85-93, 96: see PARA 515B.18.

NOTE 6--1985 Act Sch 6 amended: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 7-10--1985 Act Sch 4 para 2(2)(a),(2A)(a) substituted, Sch 4 para 2(2)(b), (2A)(b) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 17.

TEXT AND NOTES 11-14--1985 Act Sch 4 para 3 further amended: Constitutional Reform Act 2005 Sch 4 para 179(2).

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/814. The Financial Services and Markets Tribunal.

814. The Financial Services and Markets Tribunal.

For the purposes of the Financial Services and Markets Act 2000, there is to be a tribunal known as the Financial Services and Markets Tribunal (referred to in the Act as 'the Tribunal')¹. The Tribunal has the functions conferred on it by or under the Act². The Lord Chancellor³ may by rules make such provision as appears to him to be necessary or expedient in respect of the conduct of proceedings before the Tribunal⁴.

For the purpose of dealing with references to it under the Act, or any matter preliminary or incidental to a reference, the Tribunal must sit at such times and in such place or places as the Lord Chancellor may direct⁵.

The Lord Chancellor must appoint one of the members of the panel of chairmen to preside over the discharge of the Tribunal's functions⁶. The member so appointed is to be known as the President of the Financial Services and Markets Tribunal⁷. The Lord Chancellor may appoint one of the members of the panel of chairmen to be deputy president⁸ who is to have such functions in relation to the Tribunal as the president may assign to him⁹. No appointment to either office may be made unless the person appointed has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990¹⁰ or is an advocate or solicitor in Scotland of at least ten years' standing or is either a member of the Bar of Northern Ireland of at least ten years' standing or a solicitor of the Supreme Court of Northern Ireland of at least ten years' standing¹¹. If the president (or deputy president) ceases to be a member of the panel of chairmen, he also ceases to be the president (or deputy president)¹².

The Lord Chancellor must appoint a panel of persons for the purposes of serving as chairmen of the Tribunal¹³. A person is qualified for membership of the panel of chairmen if he has a seven year general qualification within the meaning of the Courts and Legal Services Act 1990, or he is an advocate or solicitor in Scotland of at least seven years' standing, or he is either a member of the Bar of Northern Ireland of at least seven years' standing or a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing¹⁴.

The Lord Chancellor must also appoint a panel of persons who appear to him to be qualified by experience or otherwise to deal with matters of the kind that may be referred to the Tribunal¹⁵.

Subject to what follows, each member of the panel of chairmen and the lay panel holds and vacates office in accordance with the terms of his appointment¹⁶. The Lord Chancellor may remove a member of either panel (including the president) on the ground of incapacity or misbehaviour¹⁷. A member of either panel may at any time resign office by notice in writing to the Lord Chancellor and is eligible for reappointment if he ceases to hold office¹⁸. The Lord

Chancellor may pay to any person, in respect of his service as a member of the Tribunal (including service as the president or deputy president), or as a person appointed to give expert assistance¹⁹, such remuneration and allowances as he may determine²⁰.

The Lord Chancellor may appoint such staff for the Tribunal as he may determine²¹. Their remuneration and such expenses of the Tribunal as the Lord Chancellor may determine are to be defrayed by the Lord Chancellor²².

On a reference to the Tribunal, the persons to act as members of the Tribunal for the purposes of the reference are to be selected from the panel of chairmen or the lay panel in accordance with arrangements made by the president for these purposes ('the standing arrangements'), which must provide for at least one member to be selected from the panel of chairmen²³. If while a reference is being dealt with, a person serving as member of the Tribunal in respect of the reference becomes unable to act, the reference may be dealt with by the other members selected in respect of that reference, or, if it is being dealt with by a single member, such other member of the panel of chairmen as may be selected in accordance with the standing arrangements for the purposes of the reference²⁴. If it appears to the Tribunal that a matter before it involves a question of fact of special difficulty, it may appoint one or more experts to provide assistance²⁵.

The president of the Tribunal may give directions as to the practice and procedure to be followed by the Tribunal in relation to references to it²⁶.

The jurisdiction and procedure of the Tribunal are discussed in detail elsewhere in this work²⁷. There is a right of appeal to the Court of Appeal on a point of law from decisions of the Tribunal²⁸.

1 Financial Services and Markets Act 2000 s 132(1).

2 Ibid s 132(2). The Tribunal hears matters referred to it under the Financial Services and Markets Act 2000, eg by persons aggrieved by decisions of the Financial Services Authority under Pt IV (ss 40-55) (see s 55) or by decisions of the competent authority in relation to the listing of securities (see ss 76-78).

3 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Financial Services and Markets Act 2000 s 132(3). Rules made by the Lord Chancellor under s 132 may, in particular, include provision (1) as to the manner in which references are to be instituted; (2) for the holding of hearings in private in such circumstances as may be specified in the rules; (3) as to the persons who may appear on behalf of the parties; (4) for a member of the panel of chairmen to hear and determine interlocutory matters arising on a reference; (5) for the suspension of decisions of the Authority which have taken effect; (6) as to the withdrawal of references; (7) as to the registration, publication and proof of decisions and orders: s 132(4), Sch 13 para 9.

5 Ibid Sch 13 para 8.

6 Ibid Sch 13 para 2(1).

7 Ibid Sch 13 para 2(2). The office of President of the Financial Services and Markets Tribunal is a qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993: see PARA 539 ante. The functions of the president may, if he is absent or is otherwise unable to act, be discharged by the deputy president (see the text and note 8 infra) or, if there is no deputy president or he too is absent or otherwise unable to act, by a person appointed for that purpose from the panel of chairmen by the Lord Chancellor: Financial Services and Markets Act 2000 Sch 13 para 2(7).

8 Ibid Sch 13 para 2(3). The office of deputy president is also a qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993: see PARA 539 ante.

9 Financial Services and Markets Act 2000 Sch 13 para 2(4).

10 As to when a person has such a qualification para 515 note 1 ante.

11 Financial Services and Markets Act 2000 Sch 13 para 2(5).

- 12 Ibid Sch 13 para 2(6).
- 13 Ibid Sch 13 para 3(1).
- 14 Ibid Sch 13 para 3(2). The panel of chairmen must include at least one member who is a an advocate or solicitor in Scotland of at least seven years' standing: Sch 13 para 3(3).
- 15 Ibid Sch 13 para 3(4).
- 16 Ibid Sch 13 para 4(1).
- 17 Ibid Sch 13 para 4(2).
- 18 Ibid Sch 13 para 4(3).
- 19 Ie under ibid Sch 13 para 7(4): see the text and note 25 infra.
- 20 Ibid Sch 13 para 5.
- 21 Ibid Sch 13 para 6(1).
- 22 Ibid Sch 13 para 6(2), (3).
- 23 Ibid Sch 13 para 7(1), (2).
- 24 Ibid Sch 13 para 7(3).
- 25 Ibid Sch 13 para 7(4).
- 26 Ibid Sch 13 para 10.
- 27 See FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 43 et seq.
- 28 See the Financial Services and Markets Act 2000 s 137; and FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 69.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

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809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

814 The Financial Services and Markets Tribunal

TEXT AND NOTES 4-22--Financial Services and Markets Act 2000 Sch 13 paras 2, 4, 8 amended: Constitutional Reform Act 2005 Sch 4 para 286.

See further s 85, Sch 14 Pt 3; and PARA 515B.18. See also s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

TEXT AND NOTES 11, 14--2000 Act Sch 13 paras 2(5), 3(2) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 34.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/815. Pensions appeal tribunals.

815. Pensions appeal tribunals.

Pensions appeal tribunals, which are established under the Pensions Appeal Tribunals Act 1943, hear appeals against certain decisions of the Secretary of State regarding service pensions. The number of pensions appeal tribunals and when and where they should sit are determined by the Lord Chancellor¹, who is also responsible for appointing and removing their members². These tribunals, for which administrative support is provided by the Court Service³, are discussed in detail elsewhere in this work⁴. The president of the tribunals holds qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993⁵.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 See the Pensions Appeal Tribunals Act 1943 s 6(1), Schedule paras 1, 2; and ARMED FORCES.

3 See PARA 502 ante.

4 See ARMED FORCES; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 624.

5 See PARA 539 ante.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/816. VAT and duties tribunals.

816. VAT and duties tribunals.

VAT and duties tribunals hear appeals arising from decisions of the Customs and Excise Commissioners. The Lord Chancellor¹ determines the number of VAT and duties tribunals which should be established, which sit at such times and at such places as he may from time to time determine². The tribunals are supervised by the Council on Tribunals³ and administrative support for them is provided by the Court Service⁴. These tribunals are discussed in detail elsewhere in this work⁵. The president and vice-president of the tribunals hold qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993⁶.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 See the Value Added Tax Act 1994 s 82(1), Sch 12 para 4.

3 See the Tribunals and Inquiries Act 1992 s 1, Sch 1 para 44 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 57.

4 See PARA 502 ante.

5 See CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1255 et seq; VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 345 et seq.

6 See PARA 539 ante.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/817. Special Commissioners and General Commissioners for the purposes of the Income Tax Acts.

817. Special Commissioners and General Commissioners for the purposes of the Income Tax Acts.

After consultation with the Secretary of State, the Lord Chancellor¹ must appoint such persons as he thinks fit as 'Commissioners for the special purposes of the Income Tax Acts' ('Special Commissioners') and he must designate one of the Special Commissioners as the Presiding Special Commissioner². No person may be so appointed unless he has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990³, he is an advocate or solicitor in Scotland of at least ten years' standing, or he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing⁴. The Lord Chancellor may change the name of the Commissioners by regulations⁵.

Special Commissioners hold qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993⁶. Administrative support for their offices is provided by the Court Service⁷.

General Commissioners, whose full title is 'Commissioners for the general purposes of the income tax', act for separate areas known as divisions⁸. They are appointed by and hold office during the pleasure of the Lord Chancellor, but may not continue in office after attaining the age of 75 years⁹.

The Special Commissioners and the General Commissioners are both appellate bodies for the purposes of the Income Tax Acts. On certain matters appeals lie exclusively to the Special Commissioners. Their jurisdiction and the procedure before them is discussed in detail elsewhere in this work¹⁰.

1 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 See the Taxes Management Act 1970 s 4(1) (as substituted; amended by virtue of the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule); and INCOME TAXATION.

3 As to when a person holds such a qualification see PARA 515 note 1 ante.

4 See the Taxes Management Act 1970 s 4(2) (as substituted and amended); and INCOME TAXATION.

5 See the Finance (No 2) Act 1992 s 75 (as amended); and INCOME TAXATION.

6 See PARA 539 ante.

7 See PARA 502 ante.

8 See the Taxes Management Act 1970 s 2(1) (as amended); and INCOME TAXATION.

9 See *ibid* s 2(2), (7) (as amended); and INCOME TAXATION.

10 See INCOME TAXATION.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform

Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/818. Child support commissioners and social security commissioners.

818. Child support commissioners and social security commissioners.

The Crown may from time to time appoint a chief child support commissioner and such number of other child support commissioners as it thinks fit¹. The chief child support commissioner and the other child support commissioners must be appointed from among persons who have a ten year general qualification within the meaning of the Courts and Legal Services Act 1990² or are advocates or solicitors in Scotland of ten years' standing³.

Every child support commissioner must vacate his office on the date on which he reaches the age of 70 years, subject to the Lord Chancellor's power⁴ to authorise his continuance in office up to the age of 75 years⁵. A child support commissioner may be removed from office by the Lord Chancellor on the ground of misbehaviour or incapacity⁶ and is barred from legal practice⁷.

Provision is also made for the appointment of deputy child support commissioners by the Lord Chancellor, from among persons who have a ten year general qualification or are advocates or solicitors in Scotland of ten years' standing⁸.

The Lord Chancellor, after consulting the Secretary of State, may make such regulations with respect to proceedings before child support commissioners as he considers appropriate⁹.

Any person who is aggrieved by a decision of an appeal tribunal¹⁰, and the Secretary of State, may appeal to a child support commissioner on a question of law¹¹. If it appears to the chief child support commissioner (or, in the case of his inability to act, to such other of the child support commissioners as he may have nominated to act for the purpose) that an application for leave to appeal, or an appeal, falling to be heard by one of the child support commissioners involves a question of law of special difficulty, he may direct that the application or appeal be dealt with by a tribunal consisting of any three or more of the child support commissioners¹². If the decision of such a tribunal is not unanimous, the decision of the majority is the decision of the tribunal; and the presiding child support commissioner has a casting vote if the votes are equally divided¹³.

The Crown may also from time to time appoint, from among persons who have a ten year general qualification or who are advocates or solicitors in Scotland of at least ten years' standing, a chief social security commissioner and such number of other social security commissioners as it thinks fit¹⁴. In addition, deputy commissioners may be appointed by the Lord Chancellor¹⁵. The tenure of office of social security commissioners is similar to that of child support commissioners¹⁶. An appeal lies to a commissioner on a point of law from certain decisions¹⁷ of an appeal tribunal¹⁸. A commissioner normally sits alone but may have the assistance of an expert¹⁹. If it appears to the chief commissioner (or, in the case of his inability to act, to such other of the commissioners as he may have nominated to act for the purpose)

that an application for leave to appeal, or an appeal, falling to be heard by one of the commissioners involves a question of law of special difficulty, he may direct that the application or appeal be dealt with, not by that commissioner alone, but by a tribunal consisting of any three or more of the commissioners; and if the decision of the tribunal is not unanimous, the decision of the majority is the decision of the tribunal and the presiding commissioner has a casting vote if the votes are equally divided²⁰.

Provision is made for certain functions of child support commissioners and social security commissioners to be delegated to officers of the Inland Revenue²¹.

Child support commissioners and social security commissioners hold qualifying judicial office for the purposes of the Judicial Pensions and Retirement Act 1993²². Administrative support for their office is provided by the Court Service²³. The jurisdiction of the commissioners and the procedure before them is discussed in detail elsewhere in this work²⁴.

1 Child Support Act 1991 s 22(1).

2 As to when a person holds such a qualification see PARA 515 note 1 ante.

3 Child Support Act 1991 s 22(2).

4 He under the Judicial Pensions and Retirement Act 1993 s 26(4)-(6): see PARA 535 ante. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Child Support Act 1991 s 22(5), Sch 4 para 1(1) (amended by the Judicial Pensions and Retirement Act 1993 s 26, Sch 6 para 23(2)).

6 Child Support Act 1991 Sch 4 para 1(3).

7 See *ibid* Sch 4 para 3.

8 See *ibid* Sch 4 para 4 (as amended).

9 *Ibid* s 22(3) (amended by virtue of the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). As to the provision that may be made by such regulations see the Child Support Act 1991 s 22(4) (amended by the Social Security Act 1998 s 86(1), Sch 7 para 29).

10 'Appeal tribunal' means an appeal tribunal constituted under the Social Security Act 1998 Pt I Ch I (ss 1-7) (as amended) (see SOCIAL SECURITY AND PENSIONS); Child Support Act 1991 s 54 (definition added by the Social Security Act 1998 Sch 7 para 47(a)).

11 Child Support Act 1991 s 24(1) (amended by the Social Security Act 1998 Sch 7 para 30). Leave to appeal is required: see the Child Support Act 1991 s 24(6) (as so amended).

12 *Ibid* Sch 4 para 5(1) (Sch 4 para 5 amended by the Social Security Act 1998 Sch 7 para 52).

13 *Ibid* Sch 4 para 5(2) (as amended: see note 12 *supra*).

14 Social Security Act 1998 s 14(12), Sch 4 para 1(1).

15 See *ibid* Sch 4 para 1(2).

16 See *ibid* Sch 4 paras 4, 5.

17 He a decision of an appeal tribunal under *ibid* ss 12, 13 (as amended): see SOCIAL SECURITY AND PENSIONS.

18 *Ibid* s 14(1). Leave to appeal is required: see s 14(10).

19 See *ibid* s 16(6).

20 *Ibid* s 16(7).

21 See the Child Support Act 1991 Sch 4 para 4A (as added); the Social Security Act 1998 Sch 4 para 6; the Child Support, Pensions and Social Security Act 2000 s 77; the Social Security Contributions (Decisions and Appeals) Regulations 1999, SI 1999/1027 (as amended); and SOCIAL SECURITY AND PENSIONS.

22 See PARA 539 ante.

23 See PARA 502 ante.

24 See SOCIAL SECURITY AND PENSIONS. As to the Child Support Act 1991 see also CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 553 et seq.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

818 Child support commissioners and social security commissioners

TEXT AND NOTES--The functions of appeal tribunals have been transferred to the First-tier Tribunal and the role of the child support commissioners and the social security commissioners has been transferred to the Upper Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). Child Support Act 1991 s 22, Sch 4 para 4A repealed, ss 24, 54, Sch 4 paras 1, 4 amended, Sch 4 para 3 substituted: SI 2008/2833. Social Security Act 1998 ss 14(1), (10), (12), 16(6), (7), Sch 4 repealed: SI 2008/2833.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(3) STATUTORY TRIBUNALS WITH APPELLATE JURISDICTION/819. Miscellaneous appeals tribunals.

819. Miscellaneous appeals tribunals.

There are a number of other statutory tribunals hearing appeals under various enactments which fall outside the scope of this title¹. The majority of such tribunals are under the supervision of the Council on Tribunals² and are specified in the Tribunals and Inquiries Act 1992³. Some examples are: (1) a levy appeal tribunal for England and Wales established under the Betting, Gaming and Lotteries Act 1963⁴; (2) chemical weapons licensing appeal tribunals⁵; (3) a conveyancing appeals tribunal constituted under the Courts and Legal Services Act 1990⁶; (4) school exclusion appeal panels⁷ and admission appeal panels⁸; and (5) social security appeal tribunals⁹.

- 1 For an extensive list of statutory tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.
- 2 As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-56.
- 3 See the Tribunals and Inquiries Act 1992 s 1(1)(a), Sch 1 Pt I (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57. The Lord Chancellor and the Secretary of State may by order amend Sch 1 by adding any such tribunals, other than any of the ordinary courts of law, as may be provided by the order: s 13(1) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). The power is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament: Tribunals and Inquiries Act 1992 s 15. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 4 It is established under the Betting, Gaming and Lotteries Act 1963 s 29 (as amended): see LICENSING AND GAMBLING vol 67 (2008) PARA 18.
- 5 It is the chemical weapons licensing appeal tribunals established by the Chemical Weapons (Licence Appeal Provisions) Order 1996, SI 1996/3030, and brought within the supervision of the Council on Tribunals by the Deregulation (Model Appeal Provisions) Order 1996, SI 1996/1678, Schedule para 37: see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 485.
- 6 It is constituted under the Courts and Legal Services Act 1990 s 39: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57. As to the jurisdiction of the Conveyancing Ombudsman over the professional conduct of licensed conveyancers see also the Courts and Legal Services Act 1990 s 43, Sch 7.
- 7 It is constituted in accordance with the School Standards and Framework Act 1998 s 67, Sch 18: see EDUCATION vol 15(1) (2006 Reissue) PARA 570.
- 8 It is constituted in accordance with ibid ss 94, 95, Sch 24 or Sch 25 para 3: see EDUCATION vol 15(1) (2006 Reissue) PARA 415 et seq.
- 9 It is the Unified Appeal Tribunals constituted under the Social Security Act 1998 Pt I Ch I (ss 1-7) (as amended): see SOCIAL SECURITY AND PENSIONS.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

809-819 Statutory Tribunals with Appellate Jurisdiction

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 13A-13D, 57A) creates a new, simplified statutory framework for tribunals and provides a structure for new jurisdictions and new appeal rights.

819 Miscellaneous appeals tribunals

NOTE 3--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

NOTE 5--SI 1996/1678 Schedule para 37 amended: SI 2008/2683.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/7. COURTS AND TRIBUNALS OF SPECIAL STATUTORY JURISDICTION/(4) MARITIME INQUIRIES AND INVESTIGATIONS/820-850. In general.

(4) MARITIME INQUIRIES AND INVESTIGATIONS

820-850. In general.

The former courts of survey and naval courts for which provision was made under the Merchant Shipping Act 1984 (now repealed)¹ have not been retained or reconstituted under the current legislation. Maritime matters which do not fall within the Admiralty jurisdiction of the High Court² or the normal civil or criminal jurisdiction of the courts are now dealt with either by a disciplinary body set up under the Merchant Shipping Act 1995³ or by an inquiry or investigation under that Act⁴.

All these matters are discussed in detail elsewhere in this work⁵.

1 See the Merchant Shipping Act 1894 ss 487-489 (courts of survey); ss 480-484 (naval courts) (all repealed).

2 As to the Admiralty jurisdiction of the High Court see PARA 615 ante; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 79 et seq.

3 See the Merchant Shipping Act 1995 s 60; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 506.

4 See eg ibid s 61 (inquiry into the fitness or conduct of a ship's officer); s 63 (inquiry into fitness or conduct of other seaman); s 271 (inquiries into deaths of crewmen and others); s 272 (inquiries into injuries to master or crewmen of fishing vessel while at sea); ss 267, 268 (marine accident investigations); and SHIPPING AND MARITIME LAW.

5 See SHIPPING AND MARITIME LAW.

UPDATE

801-820 Courts and Tribunals of Special Statutory Jurisdiction

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(1) INFERIOR COURTS AND TRIBUNALS; IN GENERAL/851. Magistrates' courts, coroners' courts and other inferior courts.

8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS

(1) INFERIOR COURTS AND TRIBUNALS; IN GENERAL

851. Magistrates' courts, coroners' courts and other inferior courts.

There were formerly many inferior courts in existence, most of which were of purely local jurisdiction¹. Of those that remain the most important are county courts, magistrates' courts and coroners' courts. County courts have already been discussed² and magistrates' courts and coroners' courts are discussed in detail elsewhere in this work³.

1 See PARA 309 ante, para 855 et seq post.

2 See PARA 701 et seq ante.

3 See CORONERS vol 9(2) (2006 Reissue) PARA 904; MAGISTRATES.

4 See PARAS 805-808 ante.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(1) INFERIOR COURTS AND TRIBUNALS; IN GENERAL/852. Miscellaneous statutory tribunals.

852. Miscellaneous statutory tribunals.

There are a number of statutory tribunals with jurisdiction under various enactments which fall outside the scope of this title¹. The majority of such tribunals are under the supervision of the Council on Tribunals² and are specified in the Tribunals and Inquiries Act 1992³. Some examples are: (1) the Commons Commissioners and assessors appointed under the Commons Registration Act 1965⁴; (2) the Copyright Tribunal constituted under the Copyright, Designs and Patents Act 1988⁵; (3) adjudicators appointed under the Criminal Injuries Compensation Act 1995⁶; (4) employment tribunals⁷; and (5) the Insolvency Practitioners Tribunal⁸.

1 For an extensive list of statutory tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

2 As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-56.

3 See the Tribunals and Inquiries Act 1992 s 1(1)(a), Sch 1 Pt I (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57. The Lord Chancellor and the Secretary of State may by order amend Sch 1 by adding any such tribunals, other than any of the ordinary courts of law, as may be provided by the order: s 13(1) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). The power is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament: Tribunals and Inquiries Act 1992 s 15. As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

Certain tribunals, eg the tribunals relating to the indemnification of justices and clerks and the mines and quarries tribunals, have never sat. See the *Annual Report of the Council on Tribunals for 1999-2000*, Table 1.

4 le appointed under the Commons Registration Act 1965 s 17(2), (3): see COMMONS vol 13 (2009) PARA 425.

5 le constituted under the Copyright, Designs and Patents Act 1988 s 145 (as amended): see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 207-208.

6 le appointed under the Criminal Injuries Compensation Act 1995 s 5 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARAS 2033-2034.

7 le employment tribunals established under the Employment Tribunals Act 1996 s 1(1): see EMPLOYMENT vol 41 (2009) PARA 1363 et seq.

8 le the Insolvency Practitioners Tribunal referred to in the Insolvency Act 1986 s 396: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

852 Miscellaneous statutory tribunals

TEXT AND NOTES--The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) (partly in force: SI 2007/2709) creates a new, simplified statutory framework for tribunals. As from 1 November 2007 the Council on Tribunals is abolished and replaced by the Administrative Justice and Tribunals Council: see 2007 Act ss 44, 45, Sch 7. See further ADMINISTRATIVE LAW.

NOTE 3--See Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(i) Abolition of Former Courts/853. Local courts.

(2) LOCAL AND ANCIENT COURTS

(i) Abolition of Former Courts

853. Local courts.

There were at one time a large number of local courts in existence which were established by royal charter, by local and personal Acts of Parliament or by prescription¹. Examples were the Court of Chancery of the County Palatine of Lancaster which, within the county palatine, exercised the same powers and jurisdiction as the High Court of Justice in its Chancery Division;

the Liverpool Court of Passage which had, in general, jurisdiction in personal actions to any amount where the defendant resided or carried on business within the boundaries of the City of Liverpool and the waters of the Port of Liverpool and the Stockport Court of Portemanimote, long in abeyance, which had jurisdiction in acts of debt and battery, and of wounding without shedding of blood.

The majority of the local courts had fallen into decay by the early part of the nineteenth century and the creation by statute of the modern system of county courts² largely completed the process.

¹ For those in existence in 1954, and the procedural and other provisions then applicable to them, see 9 Halsbury's Laws (3rd Edn) PARA 1080 et seq.

² County Courts Act 1846 (repealed). As to county courts see now the County Courts Act 1984; and PARA 701 et seq ante.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(i) Abolition of Former Courts/854. Abolition of courts or removal of their jurisdiction.

854. Abolition of courts or removal of their jurisdiction.

Forty-two local courts were abolished by Act of Parliament in 1886¹; others were abolished in 1951 in consequence of the alteration by statute of the areas for which commissions of the peace were issued². In general, where there was a recorder of a borough possessing a local court he was to serve as its judge³. Where a borough which previously had a recorder ceased to have one on the alteration of commission areas, any court for the trial of civil actions, of which the recorder was judge ex officio, was abolished, and the effect was to terminate the existence of a number of local courts⁴.

In 1971 the seven local courts which were regularly exercising civil jurisdiction were abolished as part of the general reconstruction of the higher courts, including the abolition of assizes and quarter sessions, effected in that year⁵. These were the Courts of Chancery of the Counties Palatine of Lancaster⁶ and Durham, which were merged with the High Court⁷, the Mayor's and City of London Court, which was abolished and replaced by a county court, under the same name, for the county court district of the City of London⁸, and the Bristol Tolzey and Pie Poudre Courts, the Liverpool Court of Passage, the Norwich Guildhall Court and the Salford Hundred Court, all of which were abolished⁹.

In 1972, 141 borough civil courts were abolished during the course of the reorganisation of local government¹⁰. Finally, in 1977 a number of specified courts¹¹, and any courts of certain

specified descriptions¹², which appeared to the Lord Chancellor¹³ to have jurisdiction to hear and determine legal proceedings which they no longer exercised, ceased to have such jurisdiction, although the courts themselves were not abolished¹⁴.

1 See the Municipal Corporations Act 1883 s 2 (repealed).

2 See the Justices of the Peace Act 1949 s 10 (repealed).

3 Municipal Corporations Act 1882 s 175(1) (repealed). This did not apply where the court was regulated by a local Act of Parliament, or where at the time of the passing of the Municipal Corporations Act 1835 a barrister of five years' standing acted as judge or assessor of the court: s 175(1).

4 See the Justices of the Peace Act 1949 (Commencement No 2) Order 1951, SI 1951/1182, Sch 3 para 8 (now lapsed).

5 For their jurisdiction immediately prior to abolition see the Report of the Royal Commission on Assizes and Quarter Sessions 1969 (Cmnd 4153), c x.

6 See PARA 606 ante. The office of Vice-Chancellor was preserved: Courts Act 1971 s 16(5), Sch 2 Pt I para 1(1), Pt II para 4: see PARA 522 ante.

7 Ibid s 41: see PARA 606 ante.

8 Ibid s 42(1)-(3). The circuit judge assigned to that district is to be known as the judge of the Mayor's and City of London Court: s 42(3); and see PARA 708 ante. For the position of the former assistant judge of the court see s 16(5), Sch 2 Pt I para 1(2), Pt II para 7.

9 Ibid s 43.

10 Local Government Act 1972 s 221, Sch 28 (now repealed). These were the Beccles Fen Court, Bedford Court of Pleas, Birmingham Borough Court, Bristol Mayor's Court, Buckingham Three Weeks Court, Cambridge Court of Pleas, Canterbury Mayor's Court, Carlisle Mayor and Bailiff's Court, Chester Courts of Portmote and of Pentice and Passage, Clitheroe Borough Court, Colchester Law Hundred and Foreign Courts, Conway Court Baron, Denbigh Court of Pleas, Doncaster Court of Pleas, Falmouth Court of Pleas and Record, Faversham Portmote Court, Godmanchester Court of Pleas, Great Grimsby Mayor's Court, Great Yarmouth Borough Court, Hartlepool Court of Pie Poudre etc, Harwich Court of Pleas, Haverfordwest Intrinsic Court, Hedon Court of Pleas, Hereford Mayor's Court, Huntingdon Court of Pleas, Ipswich Court of Small Pleas, King's Lynn Guildhall Court, Lancaster Borough Court of Pleas, Lincoln Borough Mote Court and Court for Foreigners, Llandovery Bailiffs' Court, Lyme Regis Court of Hustings, Macclesfield Hundred Court, Maidstone Court of Pleas, Marlborough Mayor's or King's Court, Monmouth Borough Court, Neath Court of Pleas, Newcastle upon Tyne Burgess and Non-Burgess Court, Norwich Court of Pleas, Oxford Court of Husting, Oxford Mayor's Court, Pembroke Mayor's Fortnight Court, Plymouth Mayor's Court, Pontefract Courts, Preston Court of Pleas, Ripon Borough Court, Rochester Court of Portmote, Ruthin Court of the Lordship, Salisbury Bishop's Court, Scarborough Court of Pleas, Stockport Court of Portemanimote, Wigan Court of Pleas, Winchester City Town Court, Windsor Record Court, and the Courts of Record at Abingdon, Andover, Arundel, Banbury, Barnstaple, Basingstoke, Bath, Beaumaris, Beverley, Bewdley, Bideford, Blandford Forum, Bodmin, Boston, Brecon, Bridgwater, Bridport, Bury St Edmunds, Cardiff, Chichester, Chipping Norton, Congleton, Coventry, Dartmouth, Daventry, Deal, Derby, Devizes, Dorchester, Dover, Droitwich, East Retford, Evesham, Exeter, Eye, Folkestone, Gloucester, Grantham, Gravesend, Great Torrington, Guildford, Hastings, Helston, Hertford, High Wycombe, Hythe, Kingston upon Thames, Kirby-in-Kendal, Launceston, Leicester, Leominster, Lichfield, Liskeard, Maidenhead, Newark, Newbury, Newcastle-under-Lyme, Newport (IOW), Newport (Mon), Northampton, Nottingham, Penryn, Penzance, Poole, Portsmouth, Reading Borough, Romsey, St Albans, St Ives (Cornwall), Shaftesbury, Shrewsbury, Southampton, Southwark, Southwold, Stafford, Stratford-upon-Avon, Swansea, Tamworth, Tenby, Totnes, Truro, Wallingford, Walsall, Wells, Welshpool, Weymouth and Melcombe Regis, Worcester and York.

11 The courts specified in the Administration of Justice Act 1977 s 23(1), Sch 4 Pt II: see PARA 855 post.

12 The any court of a description specified in ibid Sch 4 Pt I with two exceptions: see PARA 855 post.

13 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

14 See the Administration of Justice Act 1977 s 23, Sch 4; and PARA 855 post.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

854 Abolition of courts or removal of their jurisdiction

TEXT AND NOTES 7-9--1971 Act ss 41, 42(1), 43 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 10--1972 Act s 221 repealed: 2004 Act.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/A. IN GENERAL/855. Courts existing; in general.

(ii) The Existing Courts

A. IN GENERAL

855. Courts existing; in general.

The effect of the successive statutory provisions which have been referred to¹ has been to abolish a great many of the local and ancient courts which formerly existed. With very few exceptions those that remain are now more or less moribund, or exercise purely ceremonial functions only². Their jurisdiction is not lost by mere non-user³ but has in many cases ceased by virtue of the Administration of Justice Act 1977, which provides that a number of specified courts⁴ and, with two exceptions⁵, any court of a specified description⁶ is no longer to have jurisdiction to hear and determine legal proceedings⁷. Such courts may, however, continue to sit and transact such other business, if any, as was customary for them immediately before 17 October 1977⁸.

The 1977 Act also provided that any jurisdiction of the Court of the Chancellor or Vice-Chancellor of Oxford University and of the Cambridge University Chancellor's Court, other than that presently existing under the statutes of those universities, was abolished⁹.

The Lord Chancellor¹⁰ has power, by order¹¹, to make any incidental or transitional provision which he considers expedient in consequence of the above provisions and may, by such order, provide for enabling any jurisdiction appearing to him to have been formerly exercised by a specified court or a court of a specified description to be exercised instead by the High Court¹², the Crown Court¹³, a county court¹⁴ or a magistrates' court¹⁵ and for the amendments or repeals of provisions of any local Act as appear to him to be required in consequence of those provisions¹⁶. No such order has, however, been made, which is indicative of the fact that the jurisdiction of the affected courts had fallen into abeyance before 1977.

1 See PARA 854 ante.

2 As to courts which appear to have retained their jurisdiction see PARA 856 et seq post.

3 *A-G of Isle of Man v Cowley* (1859) 12 Moo PCC 27; *R v Steward of Havering Atte Bower* (1822) 5 B & Ald 691. For cases where mandamus (now known as a mandatory order) issued to compel the holding of courts which had not sat for very many years see *R v Hastings Corp* (1822) 1 Dow & Ry KB 148; *R v Wells Corp* (1836) 4 Dowl 562; and see the case in 1894 relating to the Worcester Court of Pleas (1894) Times, 14 March, p 13.

4 The courts specified in the Administration of Justice Act 1977 s 23(1), Sch 4 Pt II: s 23(1)(b). The specified courts are: the Basingstoke Court of Ancient Demesne; the Coventry Court of Orphans; the Great Grimbsy Foreign Court; the King's Lynn Court of Tolbooth; in the City of London, the Court of Husting (the highest and most ancient court in the City, which it seems was last held on 25 October 1965, to enrol corporation trust deeds) and the Sheriffs' Courts for the Poultry Compter and the Giltspur Street Compter (no judges of which had been appointed since 1929); the Macclesfield Court of Portmote; the Maidstone Court of Conservancy; the Melcombe Regis Court of Husting; the Newcastle-upon-Tyne Courts of Conscience or Requests and Conservancy; the Norwich Court of Mayoralty; the Peterborough Dean and Chapter's Court of Common Pleas; the Ramsey (Cambridgeshire) Court of Pleas; the Ripon Court Military; the Ripon Dean and Chapter's Canon Fee Court; the St Albans Court of Requests; the Court of the Hundred, Manor and Borough of Tiverton; the York Courts of Husting, Guildhall and Conservancy; the Ancient Prescriptive Court of Wells; and the Cheney (or Cheyney) Court of the Bishop of Winchester: Sch 4 Pt II.

5 The Estry Court for the Lordship of Denbigh and the court leet for the Manor of Laxton: *ibid* s 23(1)(a).

6 The any court of a description specified in *ibid* Sch 4 Pt I: s 23(1)(a). The descriptions of courts so specified include courts held for manors of which the Queen or the Duke of Cornwall is the lord: s 23(2). The specified descriptions of courts are: courts baron; courts leet (but see note 5 *supra*); customary courts of the manor; courts of pie poudre; courts of the staple; courts of the clerk(s) of the market(s); hundred courts; law days; views of frankpledge; common law (or sheriffs') county courts as known before the passing of the County Courts Act 1846 (repealed); Administration of Justice Act 1977 Sch 4 Pt I. As to manorial courts see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 699; and as to pie poudre (or piepowder) courts see CUSTOM AND USAGE vol 12(1) (Reissue) PARAS 662-664.

7 Administration of Justice Act 1977 s 23(1).

8 *Ibid* s 23(1); Administration of Justice Act 1977 (Commencement No 3) Order 1977, SI 1977/1589. In the case of certain courts specified in the Administration of Justice Act 1977 Sch 4 Pt III, the business that is to be treated as having been customary is, apart from business relating to the appointment of officers of the court, the business specified in relation to the court in Sch 4 Pt III col 2: s 23(1). Eg, the Court Baron of East Horndon may now sit for the management of the commons in the manor of East Horndon; the City of London Court of Husting may sit for the enrolment of wills and deeds; the Warwick Court Leet may sit for the taking of presentments with respect to matters of local concern: Sch 4 Pt III.

9 *Ibid* s 23(3). As to the statutes of the universities see further EDUCATION vol 15(2) (2006 Reissue) PARA 651 et seq.

10 As to the Lord Chancellor see PARA 501 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

11 The order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and may be varied or revoked by a subsequent order: see the Administration of Justice Act 1977 s 23(5).

12 As to the High Court see PARA 602 et seq ante.

13 As to the Crown Court see PARA 621 et seq ante.

14 As to county courts see PARA 701 et seq ante.

15 As to magistrates' courts see MAGISTRATES.

16 Administration of Justice Act 1977 s 23(4).

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

855 Courts existing; in general

TEXT AND NOTE 16--Administration of Justice Act 1977 s 23(4) amended, s 23(6) added: Constitutional Reform Act 2005 Sch 4 para 93.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/B. LOCAL COURTS/856. Barmote Courts.

B. LOCAL COURTS

856. Barmote Courts.

The Great Barmote Courts and the Small Barmote Courts of the High Peak are ancient courts with jurisdiction relating to lead mining rights and civil pleas relating to those rights in parts of Derbyshire¹. They are courts of record which are regulated by statute². The Barmote Courts of Wirksworth and adjacent liberties are similar to those of the High Peak, being also courts of record regulated by statute³. All these courts are described elsewhere in this work⁴.

1 For the position of the former Stannaries Court in Cornwall, which had jurisdiction in respect of matters relating to workers in tin mines, see PARA 707 note 17 ante.

2 High Peak Mining Customs and Mineral Courts Act 1851.

3 Derbyshire Mining Customs and Mineral Courts Act 1852.

4 See MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 596-597.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/B. LOCAL COURTS/857. Court of the Duchy Chamber of Lancaster.

857. Court of the Duchy Chamber of Lancaster.

The Court of the Duchy Chamber of Lancaster¹, which is not a court of record, may be held before the Chancellor of the Duchy of Lancaster or his deputy. It had jurisdiction concerning equities relating to land held of the Queen in right of the duchy², whether situated within the county palatine of Lancaster or not. This jurisdiction was not exclusive³. The proceedings were conducted as on the equity side in the old Courts of Exchequer and Chancery⁴. The court has never been abolished, but has not sat for a long period⁵.

1 As to the abolition of the Court of Chancery of the County Palatine of Lancaster see PARA 854 ante.

2 *Owen v Holt* (1614) Hob 77; *Fisher v Patten* (1671) 2 Keb 826; *Duchy of Lancaster Case* (1561) 1 Plowd 212. As to the Duchy of Lancaster generally see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq. On the sale of duchy land, the assurance was to be enrolled in the court within six calendar months of its date: see CROWN PROPERTY vol 12(1) (Reissue) PARA 308.

3 *Levington v Wooton* (1631) 1 Rep Ch 52; *Fleetwood v Pool* (1660) Hard 171.

4 4 Co Inst 206.

5 The last pleading on the file is in *Ord v Wood* (13 March 1835, unreported).

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/B. LOCAL COURTS/858. Chamberlain of the City of London's court.

858. Chamberlain of the City of London's court.

The Chamberlain of the City of London's court¹ existed in the time of Edward VI for hearing and determining differences and disputes between apprentices and their masters. The judges of the court were the Chamberlain and the Controller of the Chamber (who was the Vice-Chamberlain). Summonses were granted for a fee of 5p. Counsel and solicitors had audience as the 'friends' of the parties. It appears that an appeal lay to the judge of the Mayor's and City of London Court, possibly sitting with a jury². It is thought that this court is now obsolete.

1 The jurisdiction of this court was upheld on proceedings on mandamus (Royal Commission on the Amalgamation of the City and County of London 1893 (C 7493) (Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London)) and appears to have been preserved by the Employers and Workmen Act 1875 s 13 (now repealed).

2 See Royal Commission on the Amalgamation of the City and County of London 1893 (C 7493) (Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London) and Second Report of the Municipal Corporations Commissioners 1837 (H of C Paper (1837) no 239) Appendix. See also Emerson *Courts of Law of the City of London and the Corporation of London, Origin, Constitution, Powers and Duties* (1953) pp 90-91; and see further the Courts Act 1971 s 42, Sch 5.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

858 Chamberlain of the City of London's court

NOTE 2--1971 Act s 42 amended, Sch 5 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/C. FEUDAL COURTS/859. Forest courts.

C. FEUDAL COURTS

859. Forest courts.

The royal forests were formerly of considerable extent and possessed special officers, special courts and a special law. The forest courts were (1) the Swainmote; (2) the Court of Attachment; (3) Special and General Inquisitions; (4) the Regard; and (5) the Eyre. The forest law has now been abrogated, except in so far as it relates to the appointment and functions of verderers¹. The ancient forest courts still have a limited jurisdiction in that the verderers of the New Forest and of the Forest of Dean may, in their courts, inquire into offences committed in the forests against byelaws made either by them or by the Forestry Commissioners².

1 See CROWN PROPERTY vol 12(1) (Reissue) PARA 277.

2 See CROWN PROPERTY vol 12(1) (Reissue) PARA 277; FORESTRY vol 52 (2009) PARA 7.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/C. FEUDAL COURTS/860. High Court of Chivalry.

860. High Court of Chivalry.

The High Court of Chivalry takes cognisance of questions of right to arms, precedence, descent and other kindred matters of honour, which are not within the jurisdiction of the ordinary courts of law. It sat in 1955 for the first time for several centuries¹. This court is dealt with elsewhere in this work².

¹ See *Manchester Corp'n v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, High Court of Chivalry.

² See PEERAGES AND DIGNITIES vol 79 (2008) PARA 884.

UPDATE

851-862 Inferior Courts and Tribunals and Ancient Courts

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/C. FEUDAL COURTS/861. Court of Claims.

861. Court of Claims.

On the occasion of a coronation, a Court of Claims, for the purpose of hearing petitions and claims relating to services to be performed at that coronation, is constituted by Commission by the Queen herself signed with her own hand and passed under the Great Seal, the terms of which are pronounced by royal proclamation. This court is dealt with elsewhere in this work¹.

¹ See CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 23 et seq.

UPDATE**851-862 Inferior Courts and Tribunals and Ancient Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.

Halsbury's Laws of England/COURTS (VOLUME 10 (REISSUE))/8. INFERIOR COURTS AND TRIBUNALS AND ANCIENT COURTS/(2) LOCAL AND ANCIENT COURTS/(ii) The Existing Courts/D. COURTS WITH ADMIRALTY JURISDICTION/862-900. Borough and Cinque Ports courts.

D. COURTS WITH ADMIRALTY JURISDICTION**862-900. Borough and Cinque Ports courts.**

Many of the seaport boroughs had in their charters a grant of a court of Admiralty, but in 1835 all local courts, except that of the Cinque Ports, were deprived of any Admiralty jurisdiction they might have¹. Certain titular and honorific rights, however, appear still to survive². In the case of the Cinque Ports, very little remains of the former jurisdiction of the Lord Warden, whose civil jurisdiction was, in general, abolished in 1855³. The Court of Admiralty of the Cinque Ports is discussed elsewhere in this work⁴.

1 Municipal Corporations Act 1835 s 108 (repealed).

2 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 214.

3 See the Cinque Ports Act 1855, as originally enacted.

4 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 210 et seq.

UPDATE**851-862 Inferior Courts and Tribunals and Ancient Courts**

As from 1 October 2009 (see SI 2009/1604) the Supreme Court of England and Wales is renamed the Senior Courts of England and Wales; see Constitutional Reform Act 2005 s 59 and PARA 601I. Accordingly the Supreme Court Act 1981 is to be cited as the Senior Courts Act 1981 and for the words 'Supreme Court Act 1981' wherever they occur in any enactment substitute 'Senior Courts Act 1981': see Constitutional Reform Act 2005 Sch 11 para 1. In the Supreme Court Act 1981 for 'Supreme Court' in each place substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 26.